

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 22-10964-mg

4 - - - - - x

5 In the Matter of:

6

7 CELSIUS NETWORK LLC,

8

9 Debtor.

10 - - - - - x

11

12 United States Bankruptcy Court

13 One Bowling Green

14 New York, NY 10004

15

16 January 24, 2023

17 10:00 AM

18

19

20

21 B E F O R E :

22 HON MARTIN GLENN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: KAREN

1 HEARING re (I) Authorizing the GK8 Debtors to (A) Continue  
2 to Operate the GK8 Cash Management System, (B) Honor Certain  
3 Prepetition Obligations Related Thereto, (C) Maintain  
4 Existing GK8 Business Forms, and (D) Continue to Perform GK8  
5 Intercompany Transactions, (II) Granting Superpriority  
6 Administrative Expense Status to Postpetition GK8  
7 Intercompany Balances, and (III) Granting Related Relief  
8 (Related Doc ## 1627, 1653, 1784, 1902, 1917).

9  
10 HEARING re Debtor's Motion Seeking Entry of an Order (I)  
11 Authorizing the Debtors to Return Postpetition  
12 Cryptocurrency Transfers to Account Holders and (II)  
13 Granting Related Relief. (Doc#  
14 1817, 1867, 1902, 1918, 1925).

15  
16 HEARING re Debtors Motion for Entry of an Order Authorizing  
17 the Debtors to Credit Flare Tokens to Eligible Account  
18 Holders. (Doc# 1819, 1867, 1902, 1913).

19  
20 HEARING re Notice to sell certain diminis assets (ECF Doc.  
21 ## 1853, 1855, 1879, 1902, 1919, 1921).

22  
23 HEARING re Debtor's Motion Seeking Entry of an Order (I)  
24 Authorizing (A) the Transfer of Cryptocurrency Assets  
25 Serving as Collateral on Account of Institutional Loans in

1 the Ordinary Course of Business and (B) the Exercise of the  
2 Debtors Rights and Remedies Provided Under Each Master  
3 Lending Agreement and (II) Granting Related Relief. (Doc#  
4 1818, 1867, 1871, 1874, 1902, 1923, 1924, 1925).

5

6 HEARING re Motion for Reconsideration of GK8 Sale and Other  
7 Requested Relief Filed by Dan Frishberg. (Doc# 1794, 1806,  
8 1824, 1826, 1828, 1852, 1866, 1869, 1870, 1902, 1911, 1925).

9

10 HEARING re Motion to Allow Digital Assets to be Deemed  
11 Filer's Property filed by Kulpreet Khanuja. (ECF Doc. 1346,  
12 1816, 1872, 1902, 1909, 1925).

13

14 HEARING re Motion for entry of an order that ownership of  
15 ALL the coins deposited into the Celsius Earn platform by  
16 Ms. Gallagher belong to Rebecca Gallagher, etc. (related  
17 document(s)1325, 901, 1416, 136, ECF Doc. # 1508, 1872,  
18 1902, 1908, 1925).

19

20 HEARING re Motion to Approve a ruling that the stablecoins  
21 and assets in earned accounts are not property of the  
22 estate, etcetera filed by Michael Benzaken. (ECF Doc. #  
23 1512, 1814, 1872, 1902).

24

25 Transcribed by: Sonya Ledanski Hyde

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15 MICHAEL BENZAKEN, Pro Se Creditor

16 DANIEL FRISHBERG, Pro Se Creditor

17  
18 CHRIS FERRARO, Celsius

19 LISSA WORKMAN, Celsius



1 P R O C E E D I N G S

2 CLERK: All right. Starting the recording for  
3 January 24th, 2023 at 10:00 a.m. Calling Celsius Network  
4 LLC, Case Number 22-10964.

5 Admitting the parties for Kirkland. Who is going  
6 to be in each room?

7 MR. LATONA: Deanna, can you hear us?

8 CLERK: Yes, I can.

9 MR. LATONA: So this is Dan Latona of Kirkland &  
10 Ellis. This is the presentation room. Today appearing will  
11 be Ross Kwasteniet, Chris Koenig, Gabriela Hensley, and Dan  
12 Latona. There is another room, Chicago Conference. That's  
13 our viewing room. And we have a listen-in-only line.

14 CLERK: Okay, perfect.

15 MR. LATONA: Thank you.

16 CLERK: Thank you. Dan, is any other counsel  
17 going to be appearing separately that's speaking on the  
18 record?

19 MR. LATONA: Yes. We may have Grace Brier and  
20 Leah Hamlin in our Washington, D.C. office. I don't know if  
21 they've joined yet.

22 CLERK: Let me check. I don't believe so.

23 MR. LATONA: Okay.

24 CLERK: I'll look out for them. Thank you.

25 MR. LATONA: Thank you.

1 CLERK: All right. Could we have the appearances  
2 of counsel from White & Case?

3 MR. TURETSKY: Good morning, Deanna. It's David  
4 Turetsky of White & Case on behalf of the Committee. I  
5 believe my partner, Aaron Colodny is on, who will be  
6 speaking. As well Greg Pesce. I'm not sure if he has  
7 joined yet.

8 CLERK: Yeah, Aaron Colodny has joined. Mr. Pesce  
9 has not joined yet. All right.

10 All right. I'm going to ask for the parties that  
11 have joined if they could raise their hands one at a time  
12 and I'll take their appearances. If you could just use the  
13 raised hand function.

14 Mr. Adler?

15 MR. ADLER: Good morning, Deann. It's David Adler  
16 from McCarter and English on behalf of the Ad Hoc Group of  
17 Borrowers.

18 CLERK: Thank you. All right. Anyone else that  
19 is going to be speaking on the record this morning?

20 Yes, Rebecca Gallagher. Ms. Gallagher? If you  
21 could just unmute and give your appearance, please. I just  
22 want to make sure you have no issues speaking. Okay, I can  
23 see -- go ahead.

24 MS. GALLAGHER: Can you hear me and see me?

25 CLERK: Yes, I can.

1 MS. GALLAGHER: Okay, thank you.

2 CLERK: All right. So, Ms. Gallagher, your  
3 appearance is noted.

4 All right. Leah Hamlin?

5 MS. HAMLIN: Good morning. Leah Hamlin on behalf  
6 of the Debtors.

7 CLERK: All right, thank you. And if you could  
8 just specify which -- are you with Kirkland?

9 MS. HAMLIN: With Kirkland & Ellis, yes.

10 CLERK: Okay, thank you. All right. Victor de  
11 las Heras?

12 MR. DE LAS HERAS: Good morning, Deanna. Victor  
13 Ubierna de las Heras, pro se creditor.

14 CLERK: Thank you.

15 Are there any additional parties that have joined  
16 and are speaking on the record this morning? If you could  
17 just raise your hands and unmute one at a time, and I'll  
18 take your appearance.

19 All right. For the parties that have joined, if  
20 you are speaking on the record this morning and have not  
21 given your appearance, please raise your hands and I'll ask  
22 you to unmute and give your appearance for the record.

23 Yes, Grace Brier.

24 MS. BRIER: Hi. Grace Brier, Kirkland & Ellis,  
25 for Debtors.

1 CLERK: Thank you.

2 All right, for the parties that have joined, if  
3 anyone is speaking on the record this morning, please raise  
4 your hands and I will ask you to unmute and give your  
5 appearance for the record.

6 MR. PESCE: Hi, this is Gregory Pesce at White &  
7 Case on behalf of the Committee. I believe my partner,  
8 David Turetsky, mentioned I am going to speak. But I am now  
9 on and making my appearance, too.

10 CLERK: Thank you.

11 Yes, Mr. Hermann.

12 MR. HERMANN: This is Immanuel Hermann, pro se  
13 creditor. I am not sure if I'll speak, but making my  
14 appearance.

15 CLERK: All right. Thank you for noting your  
16 appearance. Appreciate it.

17 Yes, Ms. Cordry?

18 MR. CORDRY: Yes, Karen Cordry from the National  
19 Association of Attorneys General representing a number of  
20 states. I don't anticipate speaking, but just in case  
21 something comes up, you have my appearance.

22 CLERK: Thank you. All right. Are there any  
23 additional parties that have joined and that are speaking on  
24 the record this morning? And are there any additional  
25 parties that have joined that are speaking on the record

1 this morning?

2 MR. LEBLANC: Hi, Deanna. This is Andrew Leblanc  
3 of Milbank on behalf of certain preferred B shareholders. I  
4 don't anticipate speaking, but just in case, I will put my  
5 name on the record.

6 CLERK: Thank you. Mr. Lazar?

7 MR. LAZAR: Good morning, Deanna. Vincent Lazar,  
8 Jenner & Block, on behalf of the examiner.

9 CLERK: Thank you.

10 Good morning, Ms. Cornell. Are you going to be  
11 speaking on the record this morning, or is another --  
12 someone else from the U.S. Trustee's Office going to be  
13 doing so?

14 MS. CORNELL: Good morning, Deanna. It's Shara  
15 Cornell at the Office of the United States Trustee. I will  
16 be speaking this morning. Thank you.

17 CLERK: Thank you.

18 Yes, Mr. Adler?

19 MR. ADLER: Deanna, I can't start the video. It  
20 says the host has disabled it.

21 CLERK: Not to my knowledge, but that's very odd.

22 MR. ADLER: Okay.

23 CLERK: I haven't disabled anyone's video to my  
24 knowledge.

25 MR. ADLER: Okay. I'm going to drop off and then

1 come back on. Maybe it's something with the link.

2 CLERK: Okay. All right, perfect. I'll readmit  
3 you.

4 All right. Are there any additional parties that  
5 are speaking on the record this morning? If you could  
6 unmute and give your appearance, please?

7 MR. COLODNY: Hi, this is Aaron Colodny from White  
8 & Case on behalf of the Official Creditors' Committee.

9 CLERK: All right. Thank you, Aaron.

10 MR. COLODNY: Thank you.

11 CLERK: All right. I see you, Mr. Adler.

12 MR. ADLER: Okay. It's working. Thank you.

13 CLERK: You're welcome. Thank you.

14 All right, are there any additional participants  
15 that are speaking on the record this morning and have not  
16 given their appearance. If so --

17 MR. FERRARO: Hi, Deanna. I'm giving an opening  
18 statement.

19 CLERK: Thank you, Mr. Ferraro. Yeah. All right.  
20 So Christopher Ferraro. Thank you.

21 Are there any additional parties that are speaking  
22 on the record this morning that have not given their  
23 appearance? If so, please unmute one at a time and give  
24 your appearance for the record.

25 CLERK: Okay. Any additional parties that are

1 speaking on the record this morning and have not given their  
2 appearance? If so, please unmute and give your appearance  
3 at this time.

4 MR. SHANKS: Fred M. Shanks.

5 CLERK: All right. Thank you, Mr. Shanks. And if  
6 you could just specify how you are involved in the case.

7 MR. SHANKS: Pending motion for Celsius.

8 CLERK: Okay. Are you here for the -- were you  
9 here for the adversary proceeding?

10 MR. SHANKS: Yes.

11 CLERK: That actually was moved. If you give me  
12 one moment, I'll tell you what date and time.

13 MR. SHANKS: Yeah. Is it moved to February 15th?

14 CLERK: Yes, at 10:00 a.m. Yes.

15 MR. SHANKS: Okay. Then I will drop at this time.

16 CLERK: Okay. Have a good day, sir.

17 MR. SHANKS: Thank you. You too.

18 CLERK: All right. For the parties that have  
19 joined, if anyone is speaking on the record this morning and  
20 has not given their appearance, please unmute one at a time  
21 and give your appearance.

22 All right. Please pause the recording.

23 (Recess)

24 All right, for the parties that have joined, if  
25 anyone is speaking on the record this morning and has not

1 given their appearance, please do so. Mr. Benz, Mike Benz?  
2 Yes, I see your hand is raised. You could unmute and give  
3 your appearance.

4 MR. BENZAKEN: Yes, okay, you would like me to  
5 speak now.

6 THE COURT: Yes, go ahead, please.

7 MR. BENZAKEN: Okay, thank you very much. Okay,  
8 yes. My name is Mike Benzaken. I am here representing my  
9 brother's pro se motion relative to Earn and the coins in  
10 his account. I've read all of the supplementary documents,  
11 Blonstein supplementary document and the recent Earn  
12 opinion. And it looked like everyone wanted to focus on  
13 contract law. So my focus was purely on what in the  
14 contract --

15 CLERK: So, Mr. Benzaken, I am just taking  
16 appearances for the hearing. So you can definitely state  
17 that on the record when the matter is called.

18 MR. BENZAKEN: Oh, okay. I thought you were  
19 asking --

20 CLERK: I'm just taking your appearance. Yeah,  
21 not a problem. Not a problem. Sorry to interrupt the flow.

22 MR. BENZAKEN: That's all right.

23 CLERK: Yeah. So your appearance is noted. Thank  
24 you so much.

25 MR. BENZAKEN: Thank you.



1 CLERK: All right. For the parties that have  
2 joined, if anyone is speaking on the record this morning and  
3 has not given their appearance yet, please do so at this  
4 time.

5 MS. PILLAY: Good morning, Deanna. Shoba Pillay  
6 from Jenner & Block as the examiner.

7 MS. KOVSKY: Good morning, Deanna. Deb Kovsky,  
8 Troutman Pepper, for the Ad Hoc Committee of Withhold  
9 Accountholders. I'm not sure I'm going to be speaking on  
10 the record unless the Judge has any questions in terms of a  
11 status update.

12 CLERK: All right. Thank you, Deborah.

13 MR. BRUH: Hi, Deanna, it's Mark Bruh from the  
14 United States Trustee. I'll just note my appearance for the  
15 record.

16 CLERK: Thank you, Mark.

17 All right. Are there any additional parties that  
18 are giving their appearance on the record this morning?  
19 Okay.

20 I have been reminded -- I am asked to remind  
21 parties to turn off their videos if you are not speaking.  
22 So I am just passing that along. Thank you.

23 All right. For the parties that have joined, if  
24 anyone is speaking on the record this morning and has not  
25 given their appearance yet, please raise your hand one at a

1 time to give your appearance.

2 Yes, Mr. Frishberg.

3 MR. FRISHBERG: Daniel Frishberg, pro se.

4 CLERK: Thank you. All right. Are there any  
5 additional parties that have joined that are speaking on the  
6 record this morning and have not given their appearance?

7 MR. ORTIZ: Good morning, Deanna. It's Kyle Ortiz  
8 of Togut, Segal & Segal for the Ad Hoc Group of Custodial  
9 Accountholders.

10 CLERK: All right. Thank you.

11 Yes, Lissa Workman.

12 MS. WORKMAN: Lissa Workman, employee of the  
13 Debtor.

14 CLERK: All right, thank you.

15 All right. Are there any additional parties that  
16 are speaking on the record this morning and have not given  
17 their appearances yet?

18 Again, any additional parties that have not given  
19 their appearances that are speaking on the record this  
20 morning?

21 Are there any additional parties that are speaking  
22 on the record this morning and have not given their  
23 appearance? Please do at this time.

24 MR. KOTLIAR: Bryan Kotliar of Togut, Segal &  
25 Segal, counsel for the Ad Hoc Group of Custodial

1     Accountholders. I am unlikely to speak. My colleague, Mr.  
2     Ortiz, should be on and will note his appearance if he  
3     hasn't done so already.

4             CLERK: He has. Thank you.

5             All right. Any additional parties that are  
6     speaking on the record this morning and have not given their  
7     appearance? If there are any parties that have not given  
8     their appearance and are speaking on the record, please  
9     unmute and give your appearance.

10            All right. Are there any additional parties that  
11    have not given their appearance and are speaking on the  
12    record this morning? If so, please unmute and give your  
13    appearance.

14            All right. For the parties that have joined, if  
15    anyone has not given their appearance and is speaking on the  
16    record this morning, please do so.

17            All right. Judge, would you like me to read the  
18    announcement in the record and would you like to get  
19    started?

20            THE COURT: Yes, Deanna, please.

21            CLERK: All right. All persons are strictly  
22    prohibited from making any recording of court proceedings,  
23    whether by video, audio, screenshot, or otherwise.  
24    Violation of this prohibition may result in the imposition  
25    of monetary and non-monetary sanctions. The clerk of the

1 court maintains an audio recording of all proceedings, which  
2 constitutes the official record.

3 Also, parties must state their name each time they  
4 speak on the court record. A party must join with a full  
5 first and last name to be admitted from the waiting room.  
6 Parties that join with initials, a partial name, a  
7 designation such as iPhone, et cetera, will not be admitted.

8 Judge, would you like to start?

9 THE COURT: Yes, I would. Thank you very much.  
10 Good morning, everybody.

11 Mr. Kwasteniet, are you going to begin for the  
12 Debtor?

13 MR. KWASTENIET: I am, Your Honor. Can you hear  
14 me and see me okay?

15 THE COURT: Yes, I can.

16 MR. KWASTENIET: Great. I also see on the screen  
17 our CEO, Mr. Christopher Ferraro, who we have met at several  
18 prior hearings. And if it's okay with Your Honor, we would  
19 like to start with a brief update on the situation regarding  
20 the Debtor's mining operations.

21 Your Honor, we had a somewhat novel situation late  
22 last year when one of the Debtor's key mining  
23 counterparties, a company called Core Scientific -- they run  
24 effectively data centers that host mining equipment. Core  
25 filed for its own bankruptcy. We were not surprised by

1 this. We knew that Core was in some financial distress, and  
2 we had been in negotiations. And Your Honor will recall  
3 that we previously commenced litigation against Core  
4 regarding the terms of our contract.

5 In any event, Core filed for bankruptcy. And we  
6 endeavored to file notices on the docket in this case of the  
7 activity that was happening in the Core case because we  
8 thought it was an important development and we wanted to  
9 make sure Your Honor and our constituents were aware of  
10 those developments.

11 Anyway, Core filed an emergency motion shortly  
12 before the New Year's holiday. We responded to it. There  
13 was a hearing right after the new year, and Judge Jones in  
14 the court, who is overseeing the Core case, authorized  
15 rejection.

16 So one of the topics I would like to get into with  
17 Mr. Ferraro is just an update on the mining business  
18 generally and then specifically with respect to the  
19 transition and sort of what the impact has been of that core  
20 scientific rejection of our hosting contract. So if it's  
21 all right with Your Honor --

22 THE COURT: Yeah, one of the motions today is to  
23 sell de minimis assets, which I believe are mining rigs.  
24 And it certainly ties to what's happening with the mining  
25 business, the core bankruptcy. Are these rigs that Core was

1 using? If not, why do you have surplus rigs? Is the mining  
2 business -- at the last hearing when Mr. Ferraro spoke, I  
3 asked the questions I usually do; is the mining business  
4 cashflow-positive? He indicated it was. So those are all  
5 questions that not only I, but I think the creditors as a  
6 whole are quite interested in hearing the answers.

7 MR. KWASTENIET: Absolutely, Your Honor. So I  
8 would like to start with some questions for Mr. Ferraro.  
9 And we completely agree, which is why we sort of went out of  
10 our way to make sure we were filing on our docket, you know,  
11 copies of some of the important pleadings from the Core  
12 docket. It's a lot of dockets for even us to keep track of,  
13 let alone, you know, all of our constituents. So we have  
14 endeavored to keep people posted.

15 But with Your Honor's permission, maybe I'll just  
16 jump into a dialogue with Mr. Ferraro.

17 And I'll just ask Mr. Ferraro, can you please  
18 provide the Court and the parties on the line with an update  
19 on the Debtor's current mining operations?

20 MR. FERRARO: Yes. Good morning, Your Honor.

21 THE COURT: Good morning.

22 MR. FERRARO: Thanks. We are continuing to build  
23 out the mining operation and improve operational efficiency.  
24 Right now we have over 27,500 rigs hashing with  
25 approximately 17,500 rigs at our proprietary sites and

1 nearly 10,000 rigs hosted at Mawson. The recent uptime at  
2 our proprietary sites has averaged 80 to 90 percent and  
3 Mawson has recently been trending between 70 to 80 percent  
4 uptime.

5 Overall currently we are mining around seven to  
6 eight bitcoin per day at a margin of 25 to 30 percent.

7 For comparison, in the prior month, we were mining  
8 about half of that, around 14 to 16 bitcoin per day. Our  
9 EBITDA compressed in December to slightly below zero. Given  
10 pressure from BTC price and year-end accrual. Adjusting for  
11 the year-end accruals -- and this is in our monthly  
12 operating reports -- the EBITDA would have been positive in  
13 December.

14 Our margin and EBITDA have rebounded nicely in  
15 January, and we expect a margin of approximately 25 percent  
16 and an EBITDA of around \$1 million for the full month of  
17 January depending on the market.

18 Following the most recent contract rejection by  
19 Core Scientific, we began efforts to secure the return of  
20 the mining rigs. To date, we have moved over 2,150 rigs  
21 from Core. We expect just over 3,750 rigs to be picked up  
22 this week and nearly 2,700 rigs the following week. Of the  
23 37,500 rigs that were at Core, we expect nearly 6,000 rigs  
24 will be headed to our (indiscernible) site in Big Lake,  
25 Texas. Approximately 10,000 rigs to the Mawson site in

1 Midland, Pennsylvania, and we expect that slightly over  
2 20,000 rigs will be sent to temporary storage at our site in  
3 Texas as we look for new hosting opportunities. Overall, we  
4 are confident that all rigs will leave the Core sites by  
5 March 17th.

6 We have also started talking with a handful of  
7 providers to host the rigs that were at Core. Given the  
8 favorable market trends and energy prices and the improving  
9 price of bitcoin, we believe that there are options for  
10 hosting in the market that will allow us to continue mining  
11 with positive operating cashflows and significant upside.

12 THE COURT: Can you estimate, Mr. Ferraro, are you  
13 able to estimate what the decline in energy prices has been  
14 for use in the rigs? Obviously there's been a lot of public  
15 attention on the amount of electricity that's used in  
16 mining. And with the spike in energy prices, it obviously  
17 created great stress. What approximately has been the  
18 decline?

19 MR. FERRARO: We have seen a tremendous decline in  
20 the price of energy from its peaks kind of in the early  
21 fall. It's gone down 50 percent. So that's provided  
22 support for margin as cashflows as well as the increased  
23 price of BTC, which has gone up 35 percent in the last  
24 month.

25 THE COURT: Okay. Go ahead.



1 MR. FERRARO: Okay.

2 MR. KWASTENIET: Mr. Ferraro, I did -- one more  
3 question for you. The Debtor has recently filed an updated  
4 budget and coin report. It was filed at Docket Number 1905.  
5 Are you familiar with that report and can you please give an  
6 update to the Court on the latest liquidity forecast and how  
7 that compares to prior liquidity forecasts?

8 MR. FERRARO: Yes. Thanks for --

9 THE COURT: Let me just say that I have a copy of  
10 that report in front of me. So tell me which page and what  
11 you're looking at as you're reporting, okay?

12 MR. FERRARO: Yeah. I'm going to get to that in  
13 one second, Your Honor. I'm going to be looking at the --  
14 I'm going to be talking to the 13-week cashflow forecast,  
15 which is a single-page document in the report.

16 THE COURT: All right.

17 MR. FERRARO: But before I do that, I wanted to  
18 touch on Your Honor's question around selling surplus --  
19 selling rigs.

20 We decided when bitcoin kind of had bottomed,  
21 around 16,000 to 17,000 that we wanted to test the market  
22 and do a small sale of rigs. I think in this case it's  
23 around 2,000 rigs. These are some of our oldest and least-  
24 efficient rigs. To your point, Your Honor, about the cost  
25 of energy, these rigs, you know, are not as energy-efficient

1 as the most recent generation. Rigs were not at Core. They  
2 are new, in the box. And honestly right now we don't have a  
3 line of sight to plug in these 2,000 rigs. We expect that  
4 north of a million dollars will help fund the case. And we  
5 are still left with 120,000 rigs approximately to plug in  
6 and enjoy the upside to BTC prices hopefully in the near  
7 future.

8 THE COURT: Okay.

9 MR. FERRARO: And just one last thing before I get  
10 into the liquidity. You know, Ross talked at the top about  
11 the Core Scientific, kind of what we've been through. I  
12 think it's important that as we think about the path forward  
13 that we ensure that anybody who picks up the hosting  
14 operations is a good fit for the company today and for the  
15 future. And we take this aspect very seriously.

16 Okay, now on to liquidity.

17 THE COURT: But let me ask one more question. In  
18 the company's filings in Texas in connection with Core's  
19 expedited hearing on its motion to reject the contract, did  
20 Celsius estimate what it believed its rejection damages  
21 might be?

22 MR. KWASTENIET: Your Honor, we -- it's Ross  
23 Kwasteniet from Kirkland. We did not estimate the rejection  
24 damages. We're still calculating that. We did, however,  
25 note in the hearing, the emergency hearing in Texas, that we

1 believe we have a significant administrative claim.

2 The way that we pay the rent for the hosting is we  
3 pay monthly in advance. And we made a payment towards the  
4 end of December that was for January hosting. And --

5 THE COURT: Approximately how much was paid?

6 MR. KWASTENIET: It was approximately \$4.7  
7 million, Your Honor. Just under \$5 million.

8 Our rigs, per agreement with Core -- and it was  
9 included in the rejection stipulation -- were unplugged  
10 approximately, you know, on or around January 3rd, give or  
11 take. Meaning that there may have been a few days of  
12 hosting in January, but the vast majority of the month of  
13 January we did not receive hosting services. And so we're  
14 going to expect -- and if we can't reach consensual  
15 agreement, we'll be shortly filing pleadings in the Texas  
16 case to recover the prepaid rent for January, if you will,  
17 that we didn't receive the benefit of. So that I did want  
18 to note, Your Honor.

19 THE COURT: Okay.

20 MR. FERRARO: Okay, on to liquidity. With respect  
21 to the latest forecast, the Debtor's liquidity has improved  
22 compared to the previous forecast. This is as a result of  
23 the increase in the price of bitcoin and the pending sale of  
24 stable coins. The latest 13-week forecast projects  
25 approximately \$88 million of cash and \$68 million of

1 baseline liquidity in the middle of April.

2 The price of bitcoin, which has gained more than  
3 35 percent in the last month, increases the value of the  
4 mined bitcoin and makes the mining operations that much more  
5 attractive and productive, even without Core Scientific.

6 Additionally, now that the Court has authorized  
7 the Debtors to sell stable coins, the Debtors have access to  
8 much-needed liquidity that improves the cashflow forecast

9 THE COURT: Have stable coins been sold since the  
10 Court's ruling?

11 MR. FERRARO: No, but it's -- it will be this  
12 week.

13 THE COURT: Okay.

14 MR. KWASTENIET: Your Honor, I don't have anything  
15 further for Mr. Ferraro.

16 THE COURT: I do. I do. So, Mr. Ferraro, during  
17 the hearing on November 15th, 2022 -- let me -- I have the  
18 transcript if you'll just bear with me a second.

19 Okay. I ask questions about the -- let me -- I  
20 ask a question about Celsius' exposure with respect to FTX.  
21 And at Pages 27 and 28 of the transcript, your answer is  
22 there. And I won't read it verbatim, but I believe that you  
23 estimates Celsius' exposure to FTX and Alameda at  
24 approximately \$12 million.

25 I read some reports over the last week or two that

1 questioned whether Celsius had exposure to FTX and Alameda  
2 in the hundreds of millions of dollars. Are you -- I just  
3 want to ask, not for you to comment on a report you haven't  
4 seen, but I just want to see whether you have any update on  
5 what Celsius' exposure to FTX or any of its affiliates are  
6 at this time.

7 MR. FERRARO: Yes, Your Honor. My update -- I  
8 don't have it in front of me, so I apologize. But to my  
9 understanding, our exposure remains at the \$12 million. I  
10 think there was transactions between Celsius and Alameda,  
11 you know, leading up to our filing. We did have  
12 relationships with them, as I discussed I believe in  
13 November when I gave the update to the report. So I haven't  
14 read the report that you're speaking to. But, you know, our  
15 exposures from the standpoint of what's on the balance sheet  
16 are really limited to some coins on FTX and then the Alameda  
17 loan.

18 THE COURT: Okay. Let me make -- when I saw I saw  
19 a report, it wasn't from FTX. I mean, you know, there are  
20 some wild things on the internet, and I don't -- I'm not  
21 putting credence in them. But because I saw some report  
22 that suggested that the Celsius exposure was in the hundreds  
23 of millions, I thought I would ask about -- we went back and  
24 we looked at the transcript from November. And I just  
25 wanted to be sure to ask it again today. So thank you very

1 much.

2 MR. KWASTENIET: Great. So if you don't have  
3 anything further for Mr. Ferraro, I think that we can  
4 release him with Your Honor's permission.

5 THE COURT: Yes, we can. Thank you again, Mr.  
6 Ferraro.

7 MR. FERRARO: Thank you, Your Honor.

8 THE COURT: But before we get to the agenda, Mr.  
9 Kwasteniet, I would like to ask -- and I see that Vince  
10 Lazar from Jenner & Block has appeared. And I would just  
11 like to ask him for an update on the work of the examiner.  
12 I had already granted one extension to the examiner's next  
13 report.

14 Mr. Lazar, if you're there, I would appreciate it  
15 if you could just update everyone on where things stand with  
16 the examiner.

17 MR. LAZAR: I am. Good morning, Your Honor.

18 Your Honor, we've completed the interview process  
19 and we have gotten through the remainder of the documents  
20 that we requested. And so at this point we are, for lack of  
21 a better way of describing it, (indiscernible) and drafting  
22 that. We expect to be in a position to deliver an examiner  
23 (indiscernible) on Monday.

24 THE COURT: One other question I have, Mr. Lazar.  
25 And in the past, you've referred to the examiner interviews.

1 Are the interviews under oath?

2 MR. LAZAR: They are not, Your Honor. And as you  
3 may know, it's common in this type of situation. All  
4 examiners find that it is easier to get (indiscernible) than  
5 to take formal depositions.

6 THE COURT: Just stop for a second. Whoever --  
7 you know, whoever has got a microphone open is rattling a  
8 lot of paper, and it's interfering with my ability to hear.  
9 So either mute your line or stop rattling papers.

10 Go ahead, Mr. Lazar.

11 MR. LAZAR: Your Honor, I don't know if you could  
12 hear me. But as is relatively common in these examiner  
13 situations, and we've done it again in this case, it is  
14 generally considered a better way of getting information to  
15 do it by way of interview rather than under oath, which  
16 sometimes leads witnesses to be a little less open than they  
17 might otherwise be.

18 THE COURT: All right. Thank you. What's the  
19 expected date now for delivering the examiner's report?

20 MR. LAZAR: It is Monday, Your Honor.

21 THE COURT: Okay, all right. Thank you very much.

22 MR. LAZAR: Thank you.

23 THE COURT: Mr. Kwasteniet?

24 MR. KWASTENIET: Yes. Thank you, Your Honor.

25 THE COURT: Let me -- before you go on, I see a

1 hand raised. I'm not going to call on anybody during this  
2 general background section. So I will -- when we get to the  
3 docket, the calendar for today, I will, as I have in the  
4 past, give people who are addressing a specific motion an  
5 opportunity to speak. But not in terms of the background  
6 updates that we've received so far.

7 So go ahead. Katerina, if you would put your hand  
8 down, I would appreciate it. Because I am not going to call  
9 on you now. Thank you.

10 All right. Go ahead, Mr. Kwasteniet.

11 MR. KWASTENIET: Thank you, Your Honor. Before we  
12 jump into the formal agenda for this morning, I thought it  
13 might also be helpful for me to give Your Honor and the  
14 parties on the line a brief update with respect to the  
15 Debtor's sale and plan development process, if that's  
16 acceptable.

17 THE COURT: Please.

18 MR. KWASTENIET: Great. Your Honor, the final bid  
19 deadline for the whole company sale process was December  
20 12th. The bids that we received generally fell into three  
21 categories. The first was bids for discrete assets. The  
22 second were bids for migration of customer accounts to a  
23 competitor's platform. And the third involved migration of  
24 the Debtor's assets to a new, independently-managed recovery  
25 platform with the idea being that we would be able to



1 harvest value over time as market conditions improved.

2 Your Honor, thus far, the bids we have received  
3 for discrete assets and for the transfer of customer  
4 accounts have not been compelling. The Debtor's situation  
5 is unique, Your Honor, compared to some of the other crypto  
6 bankruptcies out there right now because we don't just have  
7 a portfolio of liquid crypto assets. We also have illiquid  
8 crypto assets, things like staked Ethereum as well as other  
9 illiquid assets such as the mining business, loan  
10 portfolios, and investments in other crypto projects.

11 So the Debtors can't just simply distribute their  
12 assets and move on, so to speak, because the bidding process  
13 has revealed that this would require us to sell many  
14 illiquid assets at what we believe are fire sale prices.

15 So given that, the Debtors are focused on placing  
16 their assets into a newco, which we are referring to as a  
17 recovery corporation, that would hold those assets and  
18 manage them over time to maximize value as markets improve.

19 Your Honor, we are making plans to operate the  
20 recovery corporation on a standalone basis. But,  
21 importantly, we are also in discussions with potential  
22 third-party plan sponsors who may invest in and operate the  
23 recovery corporation. Any such third party would not be  
24 affiliated with the Debtor's founders, equity holders, or  
25 former management team. These are true new third-party,

1 arm's length managers.

2 The Debtors, with input from the Committee are  
3 also still evaluating different potential transactions  
4 related to the mining business. As you heard from Mr.  
5 Ferraro, the recent surge in bitcoin pricing and the mild  
6 winter and lower power prices have sparked some new interest  
7 in the mining business, and we are evaluating potential  
8 sale, hosting, and partnership transactions with respect to  
9 the mining company.

10 Your Honor, the Debtors anticipate that a recovery  
11 management-type transaction would take place through a  
12 Chapter 11 plan. While the Debtor's Chapter 11 plan remains  
13 subject to negotiation with both the Committee and any plan  
14 sponsor who might be involved, discussions are starting to  
15 crystallize around a framework with certain key features  
16 that I think it's appropriate for me to highlight for Your  
17 Honor and the parties today.

18 First, the value of the Debtor's assets is going  
19 to inure to the benefit of accountholders. And these assets  
20 include the Debtor's liquid and illiquid cryptocurrency as  
21 well as loan receivables, the mining asset, miscellaneous  
22 crypto platform investments, and litigation claims.

23 Your Honor, I want to note that there's been some  
24 confusion on social media, which is not surprising. It  
25 seems to be inherent in the nature of social media. But

1 there's been significant chatter and confusion about the  
2 consequences of the court's Earn ruling. And the fact is  
3 that the mere fact that coins in the Earn program are  
4 property of the estate does not mean that the Debtors intend  
5 to hold onto them for all time. And I just want to say for  
6 the record and for the benefit of everybody listening that  
7 the Debtors expect this bankruptcy process will end in a  
8 plan whereby the value of the Debtor's assets, including the  
9 coins in the Earn program, go to the benefit of  
10 accountholders.

11 We've obviously had to work out some important  
12 issues in the case about the relative rights of customers in  
13 diff programs. We've had hearings on the Custody program,  
14 the Withheld customers, the Earn customers. There's more to  
15 come in the future about people who are in the Borrow  
16 program. So we have to sort out the relative rights and  
17 priorities.

18 THE COURT: Let me just stop you there. Because  
19 no doubt you've been receiving lots of communications about  
20 this. But I think that particularly one of the motions  
21 that's on for today is for loans to be paid off and for  
22 institutional parties and collateral to be returned. And  
23 that obviously raises the question for me and I think for  
24 many of the loan program non-institutional buyers, why not  
25 us? So I think it's -- the Court views it as very important

1 that we move forward expeditiously to try and resolve those  
2 issues.

3 One hopeful approach is that the Debtor and the  
4 Committee and other interested parties will try and reach a  
5 proposed consensual resolution to those issues that would  
6 not require -- you know, might require a court decision on a  
7 9019 motion, for example, but would not have to lead to a  
8 protracted litigation and disputes about how to deal with  
9 the non-institutional lenders, or borrowers rather.

10 MR. KWASTENIET: Understand, Your Honor. And it's  
11 almost as though you've been listening in on the  
12 conversations we've been having with the Creditors'  
13 Committee and with other key stakeholders.

14 It's important for me to note right now -- and  
15 we've put it in the papers, and I'm sure we'll cover it more  
16 when we get to the Institutional Loan Motion, there are some  
17 important differences between the programs. So when we talk  
18 about institutional loans, they are with arm's length third  
19 parties, sophisticated financial institutions. There's only  
20 about a dozen of them, I think maybe 14 counterparties, 40-  
21 some-odd loans spread across 14 counterparties. And they  
22 have their own sort of unique collateral posting  
23 arrangements. They have their own unique creditworthiness  
24 considerations that we have been evaluating.

25 The retail borrower program is tens of thousands

1 of folks who operate under the same terms and conditions.  
2 And so we are very hopeful that, whether it's a standalone  
3 9019 or a compromise proposed treatment that's embedded in a  
4 plan, that we will get to something that we think is  
5 attractive and gives some options to the retail borrowers.  
6 I know Mr. Adler represents a group of retail borrowers.  
7 We've had discussions with him and will continue to going  
8 forward in hopes of reaching a consensual resolution. I  
9 think I would be the first to acknowledge that any  
10 significant litigation on a creditor-by-creditor basis here  
11 is going to be massively destructive of value. And we are  
12 very focused on -- I'm not prepared as we stand here today  
13 to roll out the specifics of it, but suffice it to say, Your  
14 Honor, that issue is something that we are in advanced  
15 discussions about and are very focused on as, you know,  
16 we've made a lot of progress in a lot of the key gating  
17 issues in the case. That is an important issue that is yet  
18 to come and is firmly on our radar, Your Honor.

19 THE COURT: Can you give me an idea, an estimate  
20 of the amount of loans outstanding, collateralized loans  
21 outstanding to non-institutional borrowers? So put in  
22 context of this case, what's the range of numbers we're  
23 talking about?

24 MR. KWASTENIET: Your Honor, I'm going to give my  
25 best. And I have colleagues in the room who will kick me

1 under the table or correct me if I get it wrong. But the  
2 way that I think about it, maybe too simplistically, is it's  
3 approximately \$40,000, and there is approximately \$400  
4 million or so of loans outstanding to the retail borrower  
5 folks. So put into context, Your Honor, you know, sort of  
6 looking at a little over \$4 billion of customer coin  
7 obligations. This is roughly a ten percent issue compared  
8 to the overall magnitude. Give or take might be, you know,  
9 eight percent, 12 percent. But, you know, for purposes of  
10 an off the top of my head answer, it's about ten percent  
11 relative to the broader customer claim universe.

12 THE COURT: You've given a whole lot of soft  
13 numbers for now, and I don't want to hold you to it because  
14 I understand -- I've asked a question that wasn't thoroughly  
15 prepared to answer. Do you have an estimate of what the  
16 value of the collateral that supports those outstanding  
17 loans is?

18 MR. KWASTENIET: The last I heard, I believe that  
19 those loans are still -- that the portfolio as a whole is  
20 overcollateralized. Not to the same extent it was. But I  
21 believe that the general requirement in opening a retail  
22 loan was 2X collateral coverage. Now, obviously loans were  
23 generally taken out in stable coins and then the collateral  
24 could have been any number of -- you know, if it was a  
25 stable coin collateral, then that's obviously pretty fixed

1 because it's intended to be tied to a dollar, so less  
2 volatile. If it was a bitcoin collateral, then the value of  
3 that collateral and your relative collateralization  
4 percentage fluctuates as the market moves.

5 So my understanding, Your Honor, is that that  
6 portfolio is less collateralized as a percentage relative to  
7 the loans outstanding than it was maybe earlier in the case,  
8 but is probably coming back up a little bit as crypto prices  
9 seem to be rebounding. But as a percentage, it sort of  
10 fluctuates as the market moves, Your Honor.

11 THE COURT: All right. So when you've finished  
12 this specific topic, I see Mr. Adler's hand raised. Since  
13 you mentioned him by name in your presentation, I'm going to  
14 give him a chance to say something. But you finish on this  
15 topic and then I'll let Mr. Adler speak. And then we'll go  
16 back to other things that you want to talk about.

17 MR. KWASTENIET: Very good, Your Honor. I think  
18 that I am finished on this topic unless you have anything  
19 else or Mr. Adler raises any points that I want to respond  
20 to.

21 THE COURT: I don't. But let's see what Mr. Adler  
22 has to say. Go ahead, Mr. Adler.

23 MR. ADLER: Good morning, Judge Glenn. David  
24 Adler from McCarter & English on behalf of the Ad Hoc Group  
25 of Borrowers. I raised my hand just because I wanted to

1 provide a little bit more clarity with respect to the retail  
2 borrowing program.

3 As I understand it, there are about 23,000  
4 different borrowers. And this is from the Debtor's first  
5 day declaration, and it is consistent with what I've seen in  
6 the schedules. 23,000 borrowers who took out loans in the  
7 amount of approximately \$420 million, give or take. And the  
8 collateral as of July 13th that was backing those loans was  
9 somewhere in the neighborhood of \$800 million.

10 Just to add a little bit more color, Your Honor,  
11 about 85 percent of the loans were given against crypto that  
12 was either eth or bitcoin, bitcoin being the vast majority  
13 of the collateral. That's about 67, 70 percent as best I  
14 can tell, with the remainder, 15, 17 percent being eth.  
15 These borrowers did not take loans out in stable coin. My  
16 understanding is that most of these retail borrowers took  
17 out loans in fiat currency. So I just wanted to give Your  
18 Honor a little bit more color around the borrowers.

19 I can tell you that of the -- I'm sorry, the  
20 23,000 borrowers, approximately the top -- if you take the  
21 top 2,500, those are borrowers above \$100,000, and the  
22 remainder are below \$100,000. I think the mean or the  
23 median average loan is probably about \$15,000 or \$20,000 and  
24 the top 20 percent or so of the loans are above \$100,000.  
25 And those parties represent about 80 percent of the



1 collateral that is on the platform.

2 That's really all I wanted to add, Your Honor.

3 THE COURT: Okay. Thank you very much for the  
4 report. I think that's very helpful.

5 I view this -- you know, the Court has and the  
6 parties have raised a number of what I consider to be  
7 important gating issues. I consider this, and always has  
8 been identified as such, as one of those important issues,  
9 particularly given the number of -- you say 23,000 different  
10 borrowers. It's a large number. Maybe still only a  
11 fraction of the number of Earn accountholders, but it's  
12 still a very large and important number.

13 And so I urge you, Mr. Adler and the other counsel  
14 to work with the Debtor's counsel and Committee's counsel in  
15 seeing first is it possible to come up with an appropriate  
16 consensual resolution that would avoid really protracted and  
17 expensive litigation for everybody. And to the extent that  
18 that doesn't seem to be possible, to tee up for a court  
19 determination. Because I do consider this to be a very  
20 important set of issues that arise.

21 I mean, Mr. Kwasteniet, one of the things -- my  
22 uneducated view at this point, certainly if the collateral  
23 was received by Celsius comingled, put into the rest of the  
24 coins that the Debtor had in its portfolio, you know,  
25 there's obviously a question whether the Debtor's interest

1 is limited to a legal interest, but not the equitable  
2 interest in the collateral. That's certainly been an issue  
3 in not crypto cases, but in other kinds of bankruptcy issues  
4 (indiscernible) what was the Debtor's interest in the coins  
5 that it received as collateral. Obviously comingling raises  
6 all sorts of complicated issues. But I won't say anything  
7 more about it now. Nothing has been briefed at this point.  
8 But I am very concerned and focused on wanting to move these  
9 issues along. Let me leave it at that.

10 Mr. Adler, thank you again. Go ahead, Mr. Adler.

11 MR. ADLER: I was just going to say, Your Honor,  
12 we've been trying to work with the Committee and the Debtors  
13 on a possible resolution of these issues, bearing in mind  
14 that any reorganization, any emergence from this case has to  
15 sort of keep the loans intact to avoid tax consequences.  
16 And if you're going to do a haircut, if there's going to be  
17 a haircut of X percent of collateral, many of those loans  
18 might be in default or maybe above the margin call at that  
19 point.

20 So we've been working with those issues. We hope  
21 to obviously go forward with that. We've made a proposal to  
22 the Committee. I think we've made a proposal to the Debtor  
23 as well. And we are optimistic. And obviously if it  
24 doesn't -- if there is no resolution, we will litigate it.  
25 But we have been trying to avoid it.

1 THE COURT: Thank you very much, Mr. Adler.

2 Mr. Kwasteniet, anything else you want to say on  
3 this? And, Mr. Pesce, on behalf of the Committee is there  
4 anything you want to say just on this topic?

5 MR. PESCE: I have some other things that I wanted  
6 to raise today. But on the loan topic, Mr. Adler is  
7 definitely one of the outside parties we think is important  
8 to resolution here. We've had a lot of dialogue with him.  
9 He has been very generous in providing some concepts that  
10 might provide for a solution here on a consensual basis,  
11 like you said.

12 Candidly, the ball is in my client's court at this  
13 point to come to a view on some of the issues that you  
14 raised. We're hopeful that we can do that. And it's a big  
15 priority for us amidst all these other competing issues in  
16 the case. But Mr. Adler has not been shy about reaching out  
17 to us and making -- giving us ideas and concepts to try to  
18 respond to make this -- avoid having this become another  
19 litigated matter.

20 THE COURT: Thank you very much. And I'll give  
21 you a chance to address your other issues in a few minutes,  
22 Mr. Pesce.

23 So, Mr. Kwasteniet, why don't you go on? Do you  
24 have other areas you want to cover?

25 MR. KWASTENIET: I do, Your Honor. And just the

1 last comment on the retail loan topic. My colleagues  
2 confirmed for me that we agree with Mr. Adler's count. I  
3 think I said I thought it was tens of thousands, maybe  
4 \$40,000. They informed me that I was right about the  
5 approximate dollar amount outstanding, but we do think it is  
6 about 23,000 borrowers. And we've also come to the  
7 conclusion through our analysis that many of the borrowers  
8 hold very significant loans. So they're among the larger  
9 customers, the largest users of the Celsius platform. So we  
10 agree with that and echo the comments that Mr. Adler and Mr.  
11 Pesce made about trying to work together on a resolution and  
12 definitely a recognition that it's an important -- one of  
13 the larger remaining items that we have not briefed or  
14 otherwise resolved that we need to going forward.

15 So, Your Honor, just returning briefly -- and I'm  
16 almost done -- to my comments about where we are and how  
17 we're thinking about the plan process and the path forward.  
18 We are cognizant that we have an exclusivity deadline coming  
19 up the middle of next month that will undoubtedly need to be  
20 extended to give us time to finalize and bring forward a  
21 plan and solicit votes on the plan. But we believe the plan  
22 will focus on this recovery corporation concept which will  
23 be used to harvest the value over time for the benefit of  
24 account holders of the Debtor's various assets.

25 As we think about how to give ownership and how to

1       translate that into an actual recovery for creditors, what  
2       we're envisioning at this time is somewhat of a novel  
3       approach where we think that we can tokenize and distribute  
4       to account holders what we're referring to as an asset share  
5       token that would reflect the value of the assets managed by  
6       the recovery corporation and each accountholder's sort of  
7       ratable share or interest in those or claim against those  
8       assets. And asset tokens would also entitle holders to  
9       dividends from the recovery corporation over time as assets  
10      may be monetized. And we think that these asset share tokens  
11      would be provided to all account holders who have account  
12      balances over a certain threshold. And we're still  
13      discussing with the Committee sort of where exactly that  
14      threshold would be.

15               But one of the concepts here is that for customers  
16      with claims below that threshold level, we would envision  
17      what you've seen in other cases as more of a convenience  
18      class, where rather than giving an asset share token in sort  
19      of a longer-lived recovery corporation that's going to have  
20      to manage the illiquid assets over time, that we would give  
21      a one-time distribution in liquid crypto. It would be at a  
22      discount. We're not envisioning it's a full recovery, but  
23      it's a meaningful recovery, Your Honor. And it would be a  
24      one-time distribution in liquid crypto. Call it bitcoin,  
25      Ethereum, stable coins, something that has, you know,

1 readily tradable and readily ascertainable market value to  
2 everybody who has claims below a certain threshold.

3 And, Your Honor, we've done some work with the  
4 management team and the Alvarez Marsal team and the  
5 Committee to sort of slice and dice the customer population  
6 and stratify it and look at how many claims are below  
7 different thresholds. And we think that, you know, with a  
8 threshold as low as a U.S. Dollar value claim of sort of  
9 \$2,500 to \$5,000, you're picking up a substantial majority  
10 of our customers.

11 To Mr. Adler's point, there are a relative handful  
12 of customers who have very large claims and who make up -- a  
13 smaller percentage makes up in the aggregate a much larger  
14 percent of the assets on deposit and the claims. And then  
15 you've got a large number of smaller holders who have claims  
16 in the sort of, you know, several hundred to several  
17 thousand dollar range. And I think that a convenience class  
18 concept could easily pick up, you know, 60, 70 percent of  
19 the total customers. Right? And we hope to be in a  
20 position to offer them a one-time convenience recovery where  
21 they can take their crypto and go home and be less concerned  
22 about how do we value or how do we maximize the value of the  
23 mining company over time and what does that look like. I  
24 think the larger customers sort of own that issue, right?  
25 In order to get them their full recovery or their best

1 recovery, we're going to have to be in this for a bit of a  
2 longer process. But we're hoping that we can give a one-  
3 time convenience recovery that would satisfy actually a  
4 significant majority of our customers here.

5 And so there's more to come on that. We are still  
6 working with the Committee on how best to structure it. But  
7 I expect that that will be a significant feature. Because  
8 we're really not looking to drag the smaller investors who  
9 just -- you know, we've seen the letters, we'd like some  
10 crypto back, even at a discount, and just kind of be done  
11 with the Celsius case. And we expect to be able to give  
12 customers that option.

13 THE COURT: Two questions that flow from that.  
14 One, have you had any conversations with the regulators or  
15 the U.S. Trustee about the concepts, even though the details  
16 haven't been worked out, the concepts that you are  
17 exploring?

18 MR. KWASTENIET: I don't believe we've had a  
19 significant conversation with that U.S. Trustee's office  
20 yet, but we certainly will before we bring forward any plan,  
21 as has been our practice. Any material filing in the case  
22 we'll preview and try to surface issues and address issues.

23 We have had -- just starting very recently, Your  
24 Honor -- I won't say it's been for weeks and weeks, but  
25 starting yesterday, we reached out and had some initial

1 conversations with some of our key regulators. Those  
2 discussions are going to continue as our plans develop. But  
3 really up until this point, up until effectively now, the  
4 plans were still on the drawing board, and we didn't think  
5 that they were quite ready enough to surface conceptually  
6 with the regulators and the U.S. Trustee. But we are  
7 getting to that point. And we recognize there's been many  
8 issues raised about compliance or a lack of compliance with  
9 applicable regulations historically in the products that  
10 Celsius offered, which brings me into the last point that I  
11 want to cover with respect to how we're thinking about the  
12 go-forward plan. Because the Debtors and the Committee  
13 really have been incredibly focused on how exactly this  
14 recovery corporation is going to work. How is it going to  
15 be different than how Celsius operated historically? What  
16 can we learn from the challenges that Celsius had  
17 historically? What got us into this -- into the bankruptcy,  
18 what were the regulatory problems that the company had?

19 And so I think there's a couple key features or  
20 guideposts, if you will, that we have in mind as we're  
21 developing the plans for this recovery corporation.

22 And the first one, Your Honor, is that the  
23 recovery corporation will be a fully-licensed and registered  
24 and compliant entity with respect to all applicable federal  
25 and state regulations.



1 For example, crypto assets we envision will be  
2 hosted by or a third-party licensed custodian. Okay?  
3 Celsius put together a custody program somewhat on the fly.  
4 We are going to take the time to build a custody program  
5 from the ground up that would use a third party who is  
6 licensed to provide custody services.

7 The recovery corporation will have its own  
8 dedicated management team. And again, that management team  
9 may be an arm's length third party. We are negotiating with  
10 potential third parties who we may be able to outsource that  
11 function to, Your Honor.

12 The asset share tokens that I previously described  
13 would be freely tradable by holders. So if an accountholder  
14 gets their token and they want to ride out the recovery and  
15 try to see where we can get to in the future, they  
16 definitely have the right to do it. But for somebody who  
17 says, you know what, I would rather just sell my token,  
18 convert it into cash, other crypto, move on with life, they  
19 would have the ability to do that. And we're in discussions  
20 with various licensed broker dealers to facilitate the  
21 trading of the asset share token.

22 THE COURT: So I have a somewhat related question.  
23 And I haven't been monitoring the docket for this. Do you  
24 have any information on the extent to which claims trading  
25 has been taking place?

1 MR. KWASTENIET: We do, Your Honor. It's mostly  
2 anecdotal at this point. I think that A&M has been keeping  
3 track of a register of claims. And we can certainly provide  
4 Your Honor with more of a summary of all the activity we're  
5 aware of to date. But we are aware of some claims trading  
6 activity.

7 THE COURT: Okay, all right. Go ahead.

8 MR. KWASTENIET: Your Honor, the recovery  
9 corporation will also be a public company. It's going to  
10 have a large number of holders of the asset token. And we  
11 envision that this recovery corporation will be filing  
12 reports, public reports going forward. So your 10-Ks, your  
13 10-Qs, et cetera.

14 And additionally, Your Honor, as we had  
15 previously noted, we're in advanced discussions with the  
16 Committee, Mr. Adler's group, about how exactly the retail  
17 loan portfolio will factor into all of this. And that  
18 remains an important consideration of ours.

19 So, Your Honor, unless you have further questions,  
20 that's an update as to where we are today. Suffice it to  
21 say there has been a lot of work on the part of the company  
22 and the Committee to come up with, you know, in light of  
23 what we -- the data points we got from the sale process, how  
24 do we come up with the best plan going forward that  
25 addresses some of the problems that got us here and that

1 also provides a vehicle for creditors to recover the most  
2 value they can going forward. Because, again,  
3 unfortunately, the marketing process has indicated that  
4 simply selling the illiquid assets now, especially, you  
5 know, FTX collapsed since we started the marketing process.  
6 So things have kind of gone from bad to worse. This really  
7 doesn't seem to be the right time to liquidate the illiquid  
8 assets, and we need to come up with some structure to hold  
9 the assets, manage them, grow them, harvest their value over  
10 time. And it's a challenging project. It's one that we  
11 welcome, and to do this in a way that overcomes some of the  
12 problems that led us here in the first place, Your Honor.

13 So that is our focus. And a lot of that is  
14 happening behind the scenes, and I wanted to give Your Honor  
15 an insight into what's happening. And obviously a lot more  
16 to come in the days and weeks ahead in terms of filing  
17 plans, perhaps moving forward with a proposed plan sponsor,  
18 Your Honor. That is a definite possibility here. And there  
19 will be a lot more to come.

20 THE COURT: One of the things -- and I'm going to  
21 call on Mr. Pesce in a minute on behalf of the Committee.  
22 But I want to be sure that you order a copy of the  
23 transcript from today's hearing so that when it goes on ECF  
24 -- and actually, you might file a single pleading that  
25 points to the transcript so that anyone who hasn't tuned in

1 today, who hasn't signed onto the hearing today would be  
2 able to review this dialogue that we've been having today.  
3 Okay?

4 MR. KWASTENIET: Very good, Your Honor.

5 THE COURT: I want to be sure that everyone has  
6 the opportunity to know exactly what was said, et cetera.  
7 Okay?

8 MR. KWASTENIET: That's great, Your Honor. I will  
9 also note that as early as tomorrow I believe we would be  
10 filing a motion to further extend exclusivity. That motion  
11 will also include a synopsis of some of the bullet points  
12 that I went through today. So that will be on the docket.  
13 We will also -- and that will be on the docket sooner than  
14 the transcript. There's usually a several-day delay on the  
15 transcripts. But we will get the transcript on file with a  
16 notice as well as soon as that's available.

17 THE COURT: All right. Mr. Pesce, do you want to  
18 speak on behalf of the Committee?

19 MR. PESCE: Thank you, Your Honor. Gregory Pesce,  
20 White & Case, counsel to the Committee. I just want to make  
21 a couple of points here about the sale process and some of  
22 the other things that the Committee has been doing of late.

23 So the Committee throughout this case has been  
24 open to any and all alternatives that maximize value for the  
25 account holders.

1           That said, like Mr. Kwasteniet said, the Committee  
2 believes that a plan that provides for a restructuring  
3 versus just a straight liquidation and provides the value of  
4 those assets, many of which are illiquid, is preferable to  
5 just liquidating things piecemeal or handing them over to a  
6 competitor. And that's why we've been spending so much time  
7 on this today. That's why this case has taken quite a bit  
8 of time.

9           All that being said, Celsius has really just one  
10 shot to get this reorganization right. We also don't have a  
11 ton of cash. So we really want to make sure we measure  
12 twice and cut once so to speak. And in particular, I just  
13 want to highlight there are no -- there is no agreement  
14 today with any of the investors that we're speaking with.  
15 And whatever is put out there is going to require a lot of  
16 stakeholder buy-in and it's going to require a creditor  
17 vote. So this is a process that is closer to the end than  
18 the beginning, but we still have a bit of a way to go here.

19           And I also just want to highlight something else,  
20 which is that we are very focused, like I said, on having a  
21 plan, particularly one with like a tokenized recovery. But  
22 that's going to require a lot of approvals. It's going to  
23 require approvals from Your Honor and then it will require  
24 approvals from other parties probably. But if that is  
25 ultimately not feasible or we don't reach the final terms

1 that we need with outside parties, there are other options.  
2 It's just that those are not the most value-maximizing that  
3 are available we think today versus the tokenized recovery.  
4 We could transfer the customer assets to another exchange.  
5 I don't need to go into the risks that that would present in  
6 the current environment. Or we could self-liquidate the  
7 company and just return some of the crypto to customers.  
8 But again, even if self-liquidation is not self-  
9 effectuating, self-liquidation probably requires new capital  
10 or liquidating coins and it still requires, despite what  
11 many people listening today might have read on social media,  
12 it still requires us to resolve the gating issues with the  
13 preferred equity, with the custody parties, and with Mr.  
14 Adler and other intercreditor fights. So it just changes  
15 the format of the outcome, it doesn't actually change the  
16 path necessarily that you get there.

17 So we're continuing to work with the Debtor on  
18 this concept, but there is a bit of work to do. And we are  
19 focused on moving this case forward. But I want to echo and  
20 kind of amplify a few of those points for you, Your Honor,  
21 and for those listening.

22 I think -- and the other quick topic that I would  
23 just like to highlight, because it goes to the litigation  
24 recoveries that are going to be -- we've said this since the  
25 beginning of the case, litigation recoveries are going to be

1 a significant portion of what we provide under the plan here  
2 probably. The examiner's report is due in less than a week.  
3 As Mr. Lazar said, we've been cooperating with the examiner  
4 and we eagerly await her findings. Like the user community,  
5 we're not going to get a sneak preview. We're going to read  
6 it for the first time when it hits the docket. As the  
7 examiner has been doing her work, the committee is very  
8 mindful of the Court's directive to minimize duplication and  
9 we proceeded accordingly to make sure that the examiner has  
10 -- or that we have the benefit of all the firsthand  
11 testimony that the examiner is receiving so that we can  
12 avoid, hopefully, reexamining witnesses at a later date. So  
13 the examiner's report is going to be an important input  
14 here, particularly on what goes into the litigation trust  
15 that we expect, under all circumstances, is going to be  
16 established at the end of the case.

17 Though not directly related to the examination or  
18 our own investigation, I also wanted to highlight something  
19 that Your Honor may have read about in the media, which is  
20 that the attorney general of the State of New York recently  
21 filed a complaint against Alex Mashinsky.

22 THE COURT: I've read it.

23 MR. PESCE: Yeah. I just want to make clear that  
24 we believe it's absolutely vital for Mr. Mashinsky and his  
25 coconspirators to be held account for what they've done to

1 Celsius and the users. That said, a critical theme that  
2 we've hit on several times here is the need for a fair and  
3 equitable allocations of all account holders. The New York  
4 Attorney General's complaint seeks damages from Mr.  
5 Mashinsky that would be collected by the New York  
6 government. It's our position that all recoveries for Mr.  
7 Mashinsky and other individuals and entities that are found  
8 to be liable for wrongful conduct, be distributed to account  
9 holders and we will continue to monitor the progress of that  
10 proceeding as we work towards the outcome of this case  
11 overall.

12 So those are a couple of points I wanted to  
13 highlight. I'm happy to address any questions that the  
14 Court may have for the committee and otherwise we'll speak  
15 later on some of the other matters that are up today.

16 THE COURT: The last thing I wanted to ask you  
17 about is, you know, after the Court's Earn opinion,  
18 obviously, there are a lot of people who are very unhappy  
19 with that result. There's an appeal that has been filed.  
20 It'll follow its own course. But I've had some concern that  
21 people, creditors, Earn account holders don't fully  
22 understand the capital structure of Celsius. You know in  
23 many cases where there's substantial secured debt, there's  
24 little or nothing that would flow down to unsecured  
25 creditors. But am I correct that I know there's the issue



1 about the preferred holders and the claims against which  
2 entities and that's being teed up for decision. But this is  
3 not a case with substantial secured debt ahead of the  
4 unsecured creditors. Essentially, what the Earn account,  
5 the Earn ownership issue really addresses is are all Earn  
6 account holder's going to receive equal, you know,  
7 proportionate distributions of what's available? Can you  
8 address that, whether there are substantial senior claims  
9 ahead of the Earn account holders, your constituency?

10 MR. PESCE: Yes, I can. So it's our understanding  
11 that there is no meaningful secured debt save for maybe a  
12 handful of trade vendors which are de minimis. So at the  
13 end of the day, it's our expectation, like I think Mr.  
14 Kwasteniet said it well earlier on, as a result of the Earn  
15 ruling, it just makes clear that customers have claims  
16 against the company and then on account of those claims,  
17 they are going to receive the value if not actual  
18 cryptocurrency. I think the issue, in our view, is one,  
19 really two issues that are related. It's the intercreditor  
20 allocation of that value. So you heard from Mr. Adler that  
21 there could be a push and pull between the Earn holders and  
22 the loan parties. You're already aware of the custody  
23 issues and withhold issues.

24 And then, you know, I think when the examiner's  
25 report comes out, one of her mandates, which was added

1 later, on was the treatment of Cel. It'll be important to  
2 review that report and understand what is found about how  
3 Cel was created, marketed, used and burned so we can have an  
4 understanding of any kind of subordination issues that may  
5 exist relative to Cel holders versus other Earn holders. So  
6 it's really an intercreditor issue and a subordination issue  
7 relative to the Earn holders, but there isn't going to be a  
8 senior secured lender, bank lender that sucks up the value,  
9 like in its traditional bankruptcy case, Your Honor.

10 THE COURT: All right, thank you. Mr. Kwasteniet,  
11 go ahead.

12 MR. KWASTENIET: It's Ross Kwasteniet, again, from  
13 Kirkland. I want to echo Mr. Pesce's comments and then also  
14 maybe add a few of my own. We've been very clear from the  
15 beginning, we filed capital structure charts and we've  
16 described that we don't have bank debt. We don't even have  
17 competing bond debt. There's not an issue of, you know, at  
18 what level do the bondholders, you know, have claims versus  
19 the customer? We don't have traditional funded debt. Okay.  
20 The money that came in to fund the growth of the company  
21 came in as equity and we're taking the position that the  
22 customers, the account holders, are entitled to value first.

23 And so what that means is we do, to Mr. Pesce's  
24 point and as I noted earlier, we have to figure out, you  
25 know, we have different categories of customer claims.

1     Okay. We have held there's custody, Earn, borrow, and it's  
2     important that we sort out their relative rights with  
3     respect to each other. The vast majority of our customers  
4     are in the Earn program. And for the vast majority, we  
5     think of the value of the assets is going to go to the  
6     customers of the Earn program, again, sorting out what the  
7     other categories get.

8             The consequence of the Earn coins being property  
9     of the estate, we have to do something with them. The  
10    estate's obligation, the debtor's obligation is to propound  
11    a plan that returns value to the right people in the right  
12    form, respecting their relative, you know, priorities and  
13    rights and interests. And that's what we're doing. And  
14    we're in the later stages of being ready to do that.

15            This goes back to customers and so arguments or  
16    litigations, as between Earn customers, one customer says I  
17    relied on this, you know, advertisement or I think I was  
18    misled. We think that all Earn customers could make those  
19    similar arguments and we've already stipulated, we've  
20    already put into our schedules and statements, Your Honor,  
21    what we think everybody's precise claim is. They have a  
22    claim to the return of their crypto. We're not disputing  
23    that. Okay. And the problem is, we don't have enough  
24    crypto to go around right now. We've got some crypto. We  
25    have some illiquid assets that we're going to have to

1 realize over time; not everybody wants to stick around for  
2 that. We have these different considerations, but bottom  
3 line, it's meaningless to have individual Earn customers  
4 say, well, I should have a, you know, constructive trust for  
5 this and I can have it for that, because we don't have  
6 enough to go, to go around.

7 And one of the, one of the guiding principles in  
8 the Chapter 11 is that customers in the same class or group,  
9 right, who are similarly positioned, get treated equally.  
10 And that's our objective, Your Honor. And we think that the  
11 plan that we put forward is going to provide an equal  
12 distribution. I mean, the fact that you were, you know,  
13 feel like you were misled or that you may have been lied to,  
14 that doesn't add to the value of your claim. You still have  
15 -- your claim is for the return of your crypto for whatever  
16 reason. Maybe you made an eyes-wide-open decision and you  
17 understood the risks and it's a volatile industry. Maybe  
18 you didn't understand all that and you put the crypto on the  
19 platform and, you know, you believed in advertisement or you  
20 misunderstood something or you didn't read it. The point is  
21 it doesn't matter what was in your mind and we would waste  
22 all of our money and years trying to do trials and figure  
23 out what was in your mind and what was in your mind. At the  
24 end of the day, they all have something in common. They all  
25 deposited crypto and they all have a claim for the return of

1 the crypto. And we're focused on doing a plan that treats  
2 them equally. Again, respecting the rights of the different  
3 categories of customers we have, but the Earn customers, we  
4 think are going to be treated equally and are going to be  
5 entitled to a significant return of value here.

6 The fact that it's property, Earn is property of  
7 the estate, again, doesn't mean that Mr. Koenig and I go out  
8 and we have a party with it and, you know, we spend it. It  
9 goes back to the customers. Like that's, that is what the  
10 estate has to do. The estate has to make a return to the  
11 customers. And again, there's not bank creditors, bond  
12 creditors who are going to, like, eat up that value. It's  
13 going to go back to the customers and we're going to propose  
14 to do it in a way that's equal and ratable. And we're going  
15 to propose that we don't get into the, what was in my mind  
16 and I what video did I see? Because at the end of the day,  
17 you're entitled to your crypto. And that's the bottom line.

18 THE COURT: Let me, it raises a question I meant  
19 to ask earlier. This has to do with custody account  
20 holders, The pure custody account holder where I believe  
21 that the prior rulings and agreement was the crypto would be  
22 returned to the pure custody account holders. The issue  
23 became that there's a shortfall, if you look at it on a  
24 coin-by-coin basis. And I thought I, obviously, I don't  
25 believe there's been complete briefing on this. I thought

1 that the issue had been consensually resolved with an  
2 agreement that it would be pro rata. You know there was  
3 some briefing about the lowest intermediate balance, et  
4 cetera, but there was not complete. I thought the issue had  
5 been resolved. I guess it has not. I want to be sure that  
6 if there is no consensual resolution of that issue, I think  
7 what we've concluded was at least as to any undisputed  
8 portions, get it out as soon as possible. And if there has  
9 to be some remaining issue about how to allocate the  
10 shortfall on a coin-by-coin basis, that the Court would do  
11 that, could, could you just address that briefly where that  
12 stands?

13 MR. KWASTENIET: Absolutely, Your Honor, and we  
14 can we you can do that right now. I think we put it on the  
15 agenda as a status conference at the end of the agenda, but  
16 I'm happy to do it now. I would ask, I'd like to cede the  
17 podium to my colleague, Mr. Koenig, who is more familiar  
18 with it and who has been in conversations with Miss Cornell  
19 and the ad hoc committees on these custody issues. So I'll  
20 yield the podium. And, Your Honor, I think after that we're  
21 ready to jump into the agenda. Unless Your Honor has other  
22 questions for me.

23 THE COURT: I don't. That was the last thing. I  
24 meant to ask that earlier, but I didn't.

25 MR. KWASTENIET: Very good. I'll yield the podium

1 to Mr. Koenig. Thank you, Your Honor.

2 THE COURT: Go ahead, Mr. Koenig.

3 MR. KOENIG: Good morning, Your Honor. For the  
4 record, Chris Koenig, Kirkland and Ellis for the Celsius  
5 debtors. Pursuant to the order that Your Honor entered last  
6 week, the parties: the debtors, the committee, and the  
7 custody ad hoc group, met and conferred regarding the  
8 shortfall issue. Just as a reminder to everybody watching  
9 the hearing, as disclosed as part of the prior custody  
10 litigation, there's a shortfall of the assets in the custody  
11 wallets versus the custody liabilities. The shortfall is  
12 approximately 6 percent. That issue has not yet been  
13 resolved by the Court. So it's an open issue.

14 The parties have met and conferred and agreed as  
15 Your Honor suggested, that in order to begin processing  
16 withdrawals now, all parties have agreed that for the pure  
17 custody and the custody balances that are below the 75-75  
18 limit -- this is all disclosed in the prior litigation --  
19 the debtors will open withdrawals now and permit eligible  
20 customers to withdraw 94 percent of their eligible balance  
21 regardless of which coin is being withdrawn. So that's 94  
22 percent whether you have Bitcoin, Ethereum, USDC, or any  
23 other coin. Again, that's only -- you have to be eligible  
24 under the withdrawal order. You have to be pure custody or  
25 you have to be below the 75-75. We think that that will

1 allow us to get meaningful distributions out to our  
2 customers now while reserving what happens later on the 6  
3 percent. Perhaps we'll be able to reach a more robust  
4 agreement on that point at a later date or if not, Your  
5 Honor will have to rule in the context of a Chapter 11 plan  
6 or otherwise.

7 Following that meet and confer, the debtors  
8 updated a withdrawal schedule. It will list out all of the  
9 eligible customers and the balance that is eligible to be  
10 withdrawn. That is accounting for the 94 percent and 6  
11 percent haircut that everybody will have to take. We intend  
12 to file that schedule later this week. We're finalizing the  
13 schedule. Now we're going to share with the committee and  
14 the custody ad hoc group in the next day or so, make sure  
15 that everybody's comfortable with it before we file it, but  
16 we intend to file it this week and to reopen withdrawals as  
17 early as next week.

18 Just to reiterate for folks, as discussed at prior  
19 hearings, as reflected in the withdrawal order, the debtors  
20 may charge customers for the gas and transaction fees  
21 associated with the withdrawals off the platform. There are  
22 certain customers that have very minimal balances in the  
23 custody program. Accordingly, they will not be permitted to  
24 withdraw because the fees to withdraw would exceed the  
25 balance to be returned. That doesn't make sense. The



1 schedule will note those customers who have very de minimis  
2 balances and won't be allowed to withdraw. We want to make  
3 sure that those parties have adequate notice. And as I  
4 said, and just to reiterate to make sure everybody  
5 understands, we expect this withdrawal schedule to be  
6 finalized and filed this week and that the withdrawals can  
7 commence next week.

8 It's also important to know, and we'll make sure  
9 that notice goes out to everyone, in order to withdraw the  
10 assets, there are certain actions that users will have to  
11 take before withdrawals can commence. This is not a normal  
12 case where you can just mail a check to the address on  
13 record. Users will have to tell us a safe and white-listed  
14 address to which we should send their crypto. So what they  
15 will have to do is they will have to log into the Celsius  
16 app. They will receive notice but they'll log into the app  
17 designate new white-listed addresses further withdrawals to  
18 be sent to and they'll provide certain KYC information as  
19 well. Users will not be able to withdraw assets without  
20 providing us with these addresses and without providing us  
21 with this KYC information.

22 I just want to be clear as well, in light of  
23 recent phishing attempts and the debtors have filed a  
24 variety of phishing attempts on the docket. I want to be  
25 very clear and we're going to be very clear in all of the

1 notices that we file. No eligible user has to pay any fees  
2 directly to Celsius or any third party in order to receive  
3 any distribution. The fees will be netted on Celsius' end  
4 and paid out of the distributions on our end. Nobody has to  
5 pay any amounts in order to receive any distribution and any  
6 communication that any user receives to the contrary is  
7 false. You should report it to the debtors. We have a  
8 variety of email addresses that folks can write. There's  
9 CelsiusCreditorQuestions@Kirkland.com that you can report at  
10 any time. Our email addresses are also all over the  
11 pleadings. Please bring these phishing attempts to our  
12 attention so that we can bring them to the attention of the  
13 Court and to the larger creditor base as well.

14 I just want to be clear that we are obviously  
15 making distributions now, but nobody has to pay directly to  
16 access those distributions. We will not ask for any fees to  
17 be paid directly or for any personal identifiable  
18 information to be provided outside of the Celsius app.  
19 Everything that you have to do has to be in the app and  
20 every notice that we provide to customers will be clear that  
21 that is the only place you should provide us with that  
22 information.

23 Finally, the withdrawal order also authorized the  
24 withdrawal of the ineligible withhold assets. That's those  
25 assets that customers transferred to Celsius for which

1 Celsius was not able to offer any services. Unfortunately,  
2 identifying all of the coins that the company holds that we  
3 weren't offering services for has proven more challenging  
4 than we initially expected. We're still working on it.  
5 We'll provide an update. The ineligible withhold assets are  
6 very de minimis. It would certainly be the tail wagging the  
7 dog. So we want to start the custody withdrawals now.  
8 We'll provide an update on the withhold, the ineligible  
9 withhold assets as soon as possible. So, Your Honor, I've  
10 been speaking for a while. I want to, you know, cede the  
11 lectern to the committee and the ad hoc group and also  
12 address any questions that Your Honor has.

13 THE COURT: Well, I just want to be sure and I'm  
14 sure you're taking the appropriate precautions to make sure  
15 that the way in which the custody, pure custody account  
16 holders provide information as to where the funds should be,  
17 the custody should be transferred, is secure and, you know,  
18 appropriate steps are taken to assure that. I think the  
19 last thing anybody wants is to find out that there's been a  
20 hack or there's been any misdirection of any of the assets  
21 that are being returned. So and what I would suggest is  
22 obviously you're conferring with the ad hoc, counsel for the  
23 ad hoc committees. I would encourage you also to make sure  
24 you communicate with Miss Cornell, the U.S. Trustee's  
25 Office. I just want to be as certain as anybody can be in

1 the circumstances that it's -- whatever is going out is  
2 going to the right places.

3 MR. KOENIG: Agreed and understood, Your Honor.  
4 And that's why we've taken care to make sure that the  
5 information is going to be input into the Celsius app and  
6 not via email. We think that that will help to minimize the  
7 phishing scams. The company, you know, is working to, when  
8 distributions go out, ensure that only the assets that need  
9 to be sent out on a particular day are ever live or hot to  
10 minimize the risk of anything. Just to be clear, Celsius as  
11 ever been the subject of a hacker or anything like that.  
12 But, of course, we're going to take as many steps as we can  
13 to ensure that that doesn't happen as we, as we proceed with  
14 this withdrawal process. And we've been communicating with  
15 the committee and the ad hoc custodial account holders as  
16 well to make sure that everybody understands exactly what  
17 the process is. And, obviously, I'm not going to get into  
18 the ins and outs of in an open forum like this, but we've  
19 certainly been, we've certainly been talking about it.

20 THE COURT: Okay. And I know you said you're  
21 going to try and do this. As to the 6 percent that's not  
22 being distributed now and we're with the shortfall, I  
23 certainly hope that the constituent parties will continue to  
24 discuss whether the issue can be resolved consensually.

25 MR. KOENIG: Understood and agreed, Your Honor.

1 THE COURT: Don't let, don't let the good, you  
2 know, overcome the absolute truth. Okay. Whatever that is.

3 MR. KOENIG: Understood, Your Honor.

4 THE COURT: Everybody's -- all right, thank you  
5 very much. Mr. Kwasteniet, do you want you want to move  
6 ahead with the agenda?

7 MR. KWASTENIET: We're going to move ahead with  
8 the agenda. I'm going to pass the lectern to my colleague  
9 Miss Hensley.

10 THE COURT: Okay.

11 MR. KWASTENIET: Thank you.

12 MR. HENSLEY: Good morning, Your Honor. Can you  
13 hear me?

14 THE COURT: Yes, I can.

15 MR. HENSLEY: Gabriela Hensley of Kirkland and  
16 Ellis on behalf of the debtors and debtors-in-possession. I  
17 am presenting our motion to return post-petition transfers  
18 to account holders which is filed at Docket 1817.

19 Your Honor, we, at the December 20th hearing, we  
20 had a pro se creditor who spoke up on the record asking  
21 about this issue. At that time, we informed Your Honor that  
22 we had a couple of letters come across or emails to our  
23 inquiry inbox regarding post-petition transfers of  
24 cryptocurrency that, you know, whether by mistake or some  
25 sort of automatic recurring transfer that slipped the radar,

1 had been received. We let you know that we were looking  
2 into it and, as promised, we did. And we discovered that  
3 there were actually a number of these transfers almost  
4 11,000 coming from about 2800 unique users. All in, these  
5 transfers total approximately \$1.4 million. So it's a more  
6 substantial amount than we might have originally thought.

7 We, as promised, filed a motion. We did not  
8 receive any objections to that motion. It contains -- the  
9 proposed order filed with the motion contained a number of  
10 the protections that we discuss with parties in connection  
11 with custody. We'll file a notice saying the transfers we  
12 intend to return. You know we won't allow people to  
13 transfer them between accounts. All of that.

14 We did receive a few informal comments with the  
15 committee which we incorporated in the revised order, which  
16 is filed a Docket 1918, filed last night. I'm happy to talk  
17 Your Honor through those changes or address any questions  
18 about the motion. But if none, we would ask that the  
19 revised order be entered.

20 THE COURT: All right. Does anybody else wish to  
21 be heard?

22 MS. CORNELL: Your Honor, this is Shara Cornell of  
23 the Office of the United States Trustee. How are you?  
24 We've actually -- our office has been asking questions about  
25 this issue actually since the case has been filed. We're

1 happy that these funds are going to finally be returned.  
2 And I just wanted to bring Your Honor's attention, you know,  
3 that we are still concerned that a process will be put into  
4 place to stop these types of payments on a go-forward basis.  
5 It's our understanding that customers can still make  
6 payments to Celsius. And we just want to make sure that  
7 this is fixed on a go-forward basis as well. Thank you very  
8 much, Your Honor.

9 THE COURT: Thank you. Anybody else wish to be  
10 heard? All right, the Court has reviewed the motion --

11 CLERK: Judge, there's a hand. Ezra.

12 THE COURT: All right, Ezra Vazquez-D'Amico, I'm  
13 probably mispronouncing your name. Go ahead.

14 MR. VAZQUEZ-D'AMICO: Thanks, Your Honor. This is  
15 a question related to the pure custody. I just wanted to  
16 make sure when, when they file a schedule with a list of  
17 accounts that they're considered to be pure custody, will  
18 there be an opportunity for account holders who believe  
19 their account is pure custody to, you know, confer if they  
20 feel it's not included?

21 THE COURT: Well, what I would say is when you see  
22 the schedule, and please I encourage everybody who believes  
23 they're in this category to look at the schedule closely,  
24 please reach out and contact the debtors' counsel and also  
25 the committee's counsel and raise it with them. So, and if

1 necessary, the Court will have to deal with it. But I  
2 appreciate your concern. And I expect that all pure custody  
3 or those with amounts below that preference threshold will  
4 look at those schedules closely if you believe you're  
5 entitled to the distribution. Okay?

6 MR. VAZQUEZ-D'AMICO: Thank you.

7 THE COURT: Thank you. So with respect to this  
8 motion to credit post-petition transfers, ECF Docket Number  
9 1817 was the motion, no objections have been filed to the  
10 motion. The Court has reviewed it carefully and the motion  
11 is granted.

12 MR. HENSLEY: Thank you, Your Honor, we'll send it  
13 out.

14 THE COURT: The revised order that was entered,  
15 submit it in Word format and it will be promptly entered.  
16 Okay? Thank you very much.

17 MR. HENSLEY: Thank you, Your Honor. I would  
18 respectfully cede the podium to my colleague Mr. Latona.

19 THE COURT: Okay.

20 MR. LATONA: Good morning, Your Honor. Dan Latona  
21 of Kirkland and Ellis on behalf of the debtors. The next  
22 item on the agenda is the debtor's motion to authorize the  
23 crediting of the Flare token to eligible customers who held  
24 XRP in their eligible accounts as of the snapshot date.

25 Your Honor, Flare is a new Blockchain that has



1 created its own coins similar to other proprietary  
2 Blockchains. And the purpose of this coin is to distribute  
3 or airdrop this token to centralized exchanges in order to  
4 drive adoption of the new token. As of the snapshot date,  
5 the debtors have about approximately 250 million in  
6 obligations of Flare tokens to eligible account customers  
7 based on the snapshot date. And in connection, or as a  
8 condition of distributing these tokens to eligible account  
9 holders, the debtors and Flare entered into agreement that  
10 also provides Celsius with a grant of approximately 150  
11 million Flare tokens on account of the distribution.

12 Your Honor, the airdrop occurred on January 9th  
13 and the logistics of the drop are that 15 percent of the  
14 total aggregate number of Flare tokens to be distributed are  
15 airdropped on the token distribution event with the  
16 remainder to be distributed ratably over the next 36 months.  
17 As a result, the result of the Debtor's Chapter 11, the  
18 debtors are seeking authorization to credit these tokens to  
19 the account holders.

20 Your Honor, airdrops are common in the  
21 cryptocurrency industry. As an example, the debtor's terms  
22 of service anticipate and account for these particular  
23 airdrops in Section 14. And account holders will benefit by  
24 receiving these tokens in their accounts. These tokens will  
25 increase the value of the debtor's claims. And again, Your

1 Honor, crediting these tokens to account holders is in the  
2 sound business judgment of the debtors, they provide a grant  
3 to Celsius, and they increase the value to these account  
4 holders.

5 The debtors did not receive any formal objections.  
6 The revised order at Docket Number 1913 incorporates certain  
7 comments from the committee and unless Your Honor or anyone  
8 has any questions, the debtors would cross the entry of that  
9 order.

10 THE COURT: All right, does anybody else wish to  
11 be heard? Mr. Benz. Mr. Benz, you had your hand raised.  
12 If you wish to address this, please go ahead.

13 MR. BENZAKEN: I'm so sorry, Your Honor, I was on  
14 mute. So yes, just briefly, the airdrop constitutes a  
15 taxable event and I'm wondering for the creditors, if this  
16 is at a net loss given its current market price, if added to  
17 their accounts at this moment?

18 THE COURT: Mr. Latona, are you able to address  
19 that?

20 MR. LATONA: Your Honor, I'm not a tax attorney.  
21 Nor am I familiar with any individual account holders  
22 specific tax situation. I would advise folks to discuss  
23 with their own accountants or tax advisors.

24 MR. BENZAKEN: Well, so simply, is the coin valued  
25 more or less than it was when it was dropped?

1 MR. LATONA: The coin currently is trading at  
2 approximately .038 cents as of this morning.

3 MR. BENZAKEN: Do we know what it was that as  
4 they're dropped?

5 MR. LATONA: I don't know what it was trading of  
6 exactly at the date of the airdrop.

7 MR. BENZAKEN: Okay, so I'd like to follow up with  
8 you on that just because you said this has already decided,  
9 I just want to know if it represents a net liability to the  
10 creditors? Thank you, sir.

11 THE COURT: Mr. Jeter, Adam Jeter.

12 MR. JETER: Can you hear me?

13 THE COURT: Yes, I can.

14 MR. JETER: Okay. The one question I have is I  
15 know the (indiscernible) took a long time to be distributed.  
16 They did a snapshot in 2020 December and it got distributed  
17 (indiscernible) with all of our accounts, the custody  
18 accounts, in the middle of last year. And they said any new  
19 deposits would count as a custody deposit and go to a  
20 custody account. If these are distributed to us, will be in  
21 the Earn account or will they be in the custody account?

22 MR. LATONA: Your Honor, Dan Latona for Kirkland  
23 and Ellis. In order to treat all account holders across the  
24 platform equitably, the token would be airdropped into the  
25 account that held XRP as of the snapshot date.

1 MR. JETER: Okay. So it's going to count as based  
2 on saying it was distributed back on day of 2020, I guess  
3 when the snapshot was taken, but still when Celsius changed  
4 and no longer were offering Earn accounts to anyone in the  
5 middle of last year, any new deposit which spoke to the  
6 custody issue. So when Flare distributed January 9th to  
7 Blockchain and deposited assets into the address, why  
8 wouldn't it be considered a custody account?

9 MR. LATONA: Because if you held XRP tokens in  
10 your Earn account given the treatment that has already been  
11 decided in these Chapter 11 cases, depositing Flare token  
12 into a custody account would in effect place your claim with  
13 respect to Flare token ahead of others who did not open  
14 custody, open custody accounts after that date. So in order  
15 to treat every account holder equitably, the Flare token  
16 will be distributed to the account that held XRP tokens as  
17 of the snapshot date.

18 MR. JETER: All right, I understand.

19 THE COURT: That's okay, Mr. Jeter, you've had a  
20 chance to ask your question. Mr. Dixon.

21 MR. DIXON: Yeah, Simon Dixon, per se creditor.  
22 Just trying to understand because if it, if it belongs to  
23 custody, then it would make sense to distribute to those  
24 that hold XRP. But if it's not held in custody, then surely  
25 as property of the estate to be distributed equally among

1 everybody. Just trying to, just trying to understand how to  
2 square those together

3 MR. LATONA: Your Honor, because we understand  
4 that this was an airdrop that was a snapshot date prior to  
5 the petition day, in order to credit these tokens to account  
6 holders who are eligible to receive them, we are seeking  
7 court authority to distribute and credit those Flare tokens  
8 to the account holders who are entitled to receive them.  
9 The debtors don't want to hang out to tokens or, instead,  
10 keep them as property of the estate. They want to credit  
11 them to the eligible account holders to increase their  
12 claims because their entitled to those Flare tokens.

13 THE COURT: Thank you very much. All right. So  
14 Mr. Latona has referred to Section 14 of the terms of use.  
15 It reads as follows: "In the event that a digital asset  
16 network attempts to, or does distribute digital assets to  
17 Blockchain addresses pertaining to an eligible digital asset  
18 via airdrop or bootstrapping, collectively an airdrop, the  
19 support of any such digital, new digital assets in your  
20 Celsius account is solely at the discretion of Celsius. If  
21 we do not make a public announcement confirming our support  
22 of such new digital assets, we will not support such new  
23 digital assets, and such new digital assets will be treated  
24 as unsupported assets. To the extent you wish to receive  
25 the new digital assets to be delivered via airdrop, you are

1       advised to withdraw the applicable digital assets from your  
2       Celsius account prior to the relevant date for the airdrop.  
3       You further agree and understand that digital assets  
4       delivered via airdrop do not create or represent any  
5       relationship between us and the sender and/or the related  
6       digital asset network and do not subject us to any  
7       obligations whatsoever as they relate to the sender and/or  
8       the related digital asset network."

9               So that's -- you can find that in the so-called  
10       terms affidavit, the declaration of Mr. Mashinsky, which was  
11       filed as ECF Docket Number 393, Exhibit A-8, Section 14.  
12       That's where that lies.

13               The Court has reviewed the motion and believes it  
14       is well taken. The motion is granted.

15               MR. LATONA: Thank you, Your Honor.

16               THE COURT: Thank you, Mr. Latona.

17               MR. LATONA: The next item on the agenda is the  
18       GK8 cash management motion. The debtors and the U.S Trustee  
19       filed a joint stipulation at Docket Number 1912. The only  
20       remaining issue with respect to the GK cash management issue  
21       is the 345 issue with respect to Bank of Hapoalim. That  
22       bank has a New York branch that is an authorized depository  
23       under the U.S. Trustee guidelines. However, the cash is  
24       instead held in the Israeli branch of that bank. We have  
25       been working with Bank of Hapoalim to execute a uniform

1 depository agreement. We have not reached that agreement  
2 yet. In discussions with the U.S. Trustee, they have agreed  
3 to extend our deadline to comply with Section 345 through  
4 February 7th. We filed a revised order at Docket Number  
5 1917 that reflects that agreement and sets the final hearing  
6 on cash management for February 15th.

7 Your Honor, we did have these discussions with the  
8 U.S. Trustee. So unless Ms. Cornell has anything to add, we  
9 would ask that the second interim order be entered as well.

10 THE COURT: Ms. Cornell.

11 MS. CORNELL: Shara Cornell on behalf of the  
12 Office of United States Trustee. That's correct, Your  
13 Honor. We've agreed to a final 15-day extension in order  
14 for GK8 to come in compliance with 345. Thank you.

15 THE COURT: All right. Anybody else wish to be  
16 heard on this? All right. The motion is granted on an  
17 interim basis with the order.

18 MR. LATONA: Thank you, Your Honor.

19 THE COURT: Thank you.

20 MR. LATONA: Your Honor, the next item on the  
21 agenda is the debtor's sale of certain de minimis assets  
22 that you heard Mr. Ferraro mention at the beginning of the  
23 hearing. The initial notice was filed at Docket Number  
24 1853. In support of that sale, the debtors filed the  
25 declaration of Mr. Patrick Holert, who is the chief

1 financial officer of debtor, Celsius Mining LLC.

2 Your Honor, the debtors received one objection,  
3 Docket Number 1855 from Victor Ubierna de las Heras and the  
4 debtor has filed a reply at Docket Number 1919. I know Mr.  
5 Ferraro mentioned these specific rigs, so happy to walk  
6 through again the rationale and put it into the record, but  
7 otherwise the debtors would request that the objection  
8 overruled and that the notice be entered.

9 THE COURT: Mr. Ubierna, do you want to be heard?

10 MR. UBIERNA: I have nothing more than what it is  
11 in the Docket 1555. Thank you, Your Honor.

12 THE COURT: Thank you, Mr. Ubierna. So the  
13 questions that I had really have been addressed in the  
14 preliminary comments by Mr. Ferraro and that was really is  
15 mining still cash flow positive? What's the status of the  
16 current mining activities? How does the selling of the rigs  
17 relate to the genders reorganization plan? So I'm satisfied  
18 after hearing Mr. Ferraro, I think those were important  
19 questions and so I'm satisfied. So the motion to approve  
20 the sale de minimis assets is granted.

21 MR. LATONA: Thank you, Your Honor. The next item  
22 on the agenda, Your Honor, is the debtor's institutional  
23 loan motion, again, filed at Docket Number 1818. There was  
24 a revised order filed at Docket Number 1924. And again,  
25 there was a lot of discussion earlier on about the debtor's



1 institutional loan program and the differences between the  
2 retail loan program. Again, happy to walk through anything  
3 for the record, but I believe the debtors have determined,  
4 or demonstrated that reinstating the -- authorizing the  
5 debtors to take action on account of the individual MLAs is  
6 a sound exercise of the business judgment because as we  
7 heard, the retail lending book, as a whole, is substantially  
8 over collateralized. That is not the case for the  
9 institutional loan book, which is also smaller in scale,  
10 both in terms of unique individual borrowers and also total  
11 aggregate number of obligations outstanding.

12 And importantly, Your Honor, this does not allow  
13 or permit or direct the debtors to take any action. It  
14 authorizes the debtors to take action with respect to any  
15 individual loan or series of loans to the extent that taking  
16 action would be accretive to the debtor's estates. So  
17 unless Your Honor has any further questions, unless Mr.  
18 Adler has anything else to add, we would respectfully  
19 request entering the order at Docket Number 1924.

20 THE COURT: I do have some questions. Can the  
21 debtors explain the discrepancy in the institutional lending  
22 program as described in the motion compared to the  
23 description in Mr. Mashinsky's First Day declaration? The  
24 motion indicates that there are approximately 14  
25 institutional borrowers with approximately \$115 million of

1 aggregate outstanding balances. Mr. Mashinsky's First Day  
2 declaration indicated that as of July 11th, 2022, Celsius  
3 had approximately 47 institutional borrowers with  
4 approximately 93 million of aggregate outstanding loans. I  
5 tried looking for reconciliation of those differences.

6 MR. LATONA: Of course, Your Honor, happy to  
7 provide that. So the First Day declaration lists the total  
8 aggregate number of loans outstanding. And the motion  
9 references the number of unique individual borrowers. So an  
10 individual borrower may have multiple loans under one MLA.  
11 The total number aggregates to 47. The difference in the  
12 number, or the total aggregate amount of obligations  
13 outstanding and the value of the collateral relate to the  
14 fluctuation in cryptocurrency values as of the petition date  
15 to the current date.

16 THE COURT: All right. Next question is whether  
17 any of the actions that the debtor is seeking to take would  
18 involve the movement of any assets that are in custody  
19 accounts? Given the ongoing efforts to make distributions,  
20 I want to be sure the debtors are not touching those assets.

21 MR. LATONA: Absolutely, Your Honor. My  
22 understanding is that none of the collateral securing these  
23 loans has ever been in either Earn or custody. But we will  
24 work with the committee and we will work with the debtors to  
25 ensure that none of those assets are touched.

1 THE COURT: All right. Lastly, Mr. Pesce or one  
2 of your colleagues, the committee did not file an objection  
3 but it would be helpful to the Court if you could confirm  
4 whether the committee is comfortable with the relief that  
5 the debtors are seeking? Yeah, that's my question.

6 MR. PESCE: Thank you. For the record, Robert  
7 Pesce, White and Case, on behalf of the committee. Yes, we  
8 are comfortable and as reflected in the red line, there were  
9 a variety of changes that were made to the order to address  
10 some of the feedback that we had to this motion.

11 THE COURT: All right. There's at least one hand  
12 raised, Paul Breuder, B R E U D E R. I may have  
13 mispronounced it, but I will give you a chance to address  
14 the Court if you wish.

15 MR. BREUDER: Good morning, Your Honor. My name  
16 is Paul Breuder. I just have one question regarding my  
17 loans. Can the debtors please outline what is going out in  
18 terms of collateral value and what is being returned to the  
19 debtor's estate?

20 MR. LATONA: The total --

21 THE COURT: Go ahead, Mr. Latona. You need to  
22 identify each time you speak, Mr. Latona.

23 MR. LATONA: Sure. Again, Dan Latona for the  
24 debtors from Kirkland and Ellis. The total outstanding  
25 obligations is approximately \$115 million. The collateral

1     securing those obligations is approximately \$16 million. So  
2     to the extent that the debtor has determined that bringing  
3     in crypto or releasing crypto on account of payoff of the  
4     institutional loan is accretive to the estate, the debtors  
5     will take such action. The collateral securing those loans  
6     is made up of various cryptocurrency, mostly Bitcoin,  
7     Stablecoin and Eth in most instances. In certain instances,  
8     the debtors are prevented from taking action. For example,  
9     Alameda Research and Three Arrows Capital, those entities  
10    are in Chapter 11 under their own insolvency protection. So  
11    we cannot take action without court authority in those  
12    proceedings. But, again, notably that the committee has  
13    certain consent and consult rights with respect to any  
14    workouts in any cryptocurrency that leaves the debtor's  
15    platform.

16                 THE COURT: Mr. Adler.

17                 MR. ADLER: Good morning, Your Honor. David Adler  
18    on behalf the ad hoc group. We filed an amended objection  
19    last Tuesday where we raised a number of points and issues  
20    regarding this proposal. The debtors were nice enough to  
21    send me a list of the institutional borrowers, the number of  
22    loans, the collateral, and other information. And while  
23    there's a confidentiality order in effect that I'm not going  
24    to mention names, I do want to say that there are 15  
25    borrowers in total that constitute 47 loans. The gross

1 loans outstanding are 518 million. And the collateral value  
2 is 16.6 million. Now there are five of those 15 borrowers  
3 that have zero collateral that got loans from Celsius by  
4 providing no collateral. The collateral column is listed as  
5 zero. One of them was mentioned before, Alameda, which has  
6 a loan of which has some FTTs serving as collateral. You  
7 take those six loans out of the picture, you are left with  
8 25.2 million in outstanding loans that is backed by 16.6  
9 million in collateral that consists of Bitcoin, Eth, and  
10 Stablecoin. And there's one borrower here, I won't mention  
11 the borrower's name, but the borrower has Stablecoin of \$1.7  
12 million, gross loan of half a million dollars,  
13 overcollateralized by \$1.2 million.

14 I count five of the remaining borrowers as being  
15 over collateralized and four of them being under  
16 collateralized. And my calculation, Your Honor, is based on  
17 the fact that Bitcoin and Eth have both risen about 35, 37  
18 percent since this report was prepared. I am concerned,  
19 Your Honor, because I don't think there's been a sufficient  
20 factual record developed here to support the business  
21 judgment rule. The debtor's talk about these agreements  
22 being bespoke. It's a nice word to use, bespoke. When I  
23 looked at the agreement, Your Honor, they look like they're  
24 you know more off the rack because they're all pretty much  
25 the same thing. There might be little tweaks here and there

1 on the agreements, but they are substantially the same as a  
2 retail borrower lending agreements. There is a provision of  
3 collateral. There are remedies that are available. There's  
4 loan-to-value ratios that need to be maintained. And I'm  
5 concerned, Your Honor, because I don't think there's been a  
6 sufficient factual record developed here.

7 All of this is being based on lawyer argument.  
8 We're told in the reply that -- it's Paragraph 3, Paragraph  
9 1 in the preliminary statement -- that says the risk that  
10 the loans provided by the debtors will become uncollectable  
11 has greatly increased and made prompt action with respect to  
12 such loans necessary to maximize the value of the debtor's  
13 estate. Well, I just read to Your Honor that five of the  
14 loans at this moment I believe are over collateralized. Now  
15 Your Honor doesn't know any of that because none of this  
16 nation has been put before you in the form of a declaration  
17 showing what these "bespoke MLAs" reflect. But I've seen it  
18 and I can say that it is substantially similar to the retail  
19 borrowing program.

20 So we don't believe, number one, that a sufficient  
21 factual record has been developed. Number two, I think that  
22 this type of relief should be granted pursuant to a plan or  
23 some other type of process, not just merely saying we want -  
24 - it's our business judgment, Judge. We want to give back  
25 the collateral to borrowers. Take our word for it. We need

1 to do this. I think that it is not in the ordinary course  
2 of business. I don't think this should be approved under  
3 that standard. And I think that the debtors should be  
4 required to put forth a declaration with the MLAs. They can  
5 obviously redact them if they need to so that we can have an  
6 informed discussion about the differences between the  
7 institutional program and the retail program. And unless  
8 Your Honor has any further questions, that's my response.

9 THE COURT: Thank you. Mr. Jeter, your hand is  
10 raised.

11 MR. JETER: Yeah, we'll be here. So my other  
12 question I have is I know the second person for Kirkland had  
13 mentioned if we were doing withdrawals next week doing  
14 custody to 94 percent. And then I think I've read it  
15 before, but are they going to allow a very small amount of  
16 withdrawal for Earn customers, even \$75? It's only about  
17 75-75 I believe. I'm just wondering. I thought I read  
18 something of that being together in detail about it.

19 THE COURT: Mr. Jeter, what I would say is what  
20 you're not raising an issue that's really pertinent to the  
21 specific motion that the Court is considering now.

22 MR. JETER: It was a general question. I'm sorry.

23 THE COURT: All right. Mr. Latona, can you  
24 address Mr. Adler's issues that he's raised?

25 MR. LATONA: Yes, happy to respond. Again, Dan

1 Latona of Kirkland Ellis on behalf of the debtors. I'd like  
2 to make one clarification and then respond to Mr. Adler.  
3 Mr. Adler represented that there are approximately 500  
4 million in outstanding obligations. That's including a loan  
5 that was worked out prepetition under which the debtors are  
6 still operating with that counterparty. The debtors do not  
7 seek relief with respect to that counterparty in this  
8 particular motion. What I would say to Mr. Adler is that  
9 the debtors are really seeking authorization, not direction,  
10 to unwind any particular institutional loan to the extent  
11 that the debtors find it is value accretive to the estate.  
12 So even if, for example, we were to extend the same relief  
13 to the retail lending book, it wouldn't entitle those retail  
14 borrowers to the immediate return of their cryptocurrency.  
15 It's still within sound exercise of the debtor's business  
16 judgment to take action on any independent loan where the  
17 debtors find its value accretive to the estate.

18 The second thing I would add is that there are  
19 significant safeguards built into the order specifically  
20 with respect to consent rights and consultation rights with  
21 the UCC. Debtors are not able to enter into any workouts or  
22 release cryptocurrency from the platform without the express  
23 consent of the UCC or, absent that consent, without further  
24 order of the Court. So the Court would not be writing the  
25 debtors a blank check to unwind their loan portfolio. There



1 are significant safeguards built in. And because of that,  
2 Your Honor, the debtors do believe it is a sound exercise of  
3 their business judgment. It lowers and reduces the risk of  
4 the institutional loan book at a time when cryptocurrency  
5 markets are in pretty severe fluctuation.

6 THE COURT: All right. The Court is going to take  
7 -- I have one more hand. Briefly, Mr. Bronge. Mr. Bronge,  
8 if you want to be heard, go ahead. One last chance, your  
9 hand is raised on my screen, Bronge. If you want to be  
10 heard, go ahead and do it now.

11 All right. Having giving Mr. Bronge an  
12 opportunity to be heard and he didn't speak up, I'm going to  
13 take this motion under consideration and expect to issue an  
14 order within a few days at most. Let's move on to the next  
15 agenda item.

16 MR. LATONA: Thank you, Your Honor. The next item  
17 on the agenda is Mr. Frishberg's motion to reconsider the  
18 GK8 sale. Being that this is his motion, I will cede the  
19 virtual lectern over to him.

20 THE COURT: Okay. Mr. Frishberg.

21 MR. FRISHBERG: Thank you, Your Honor. I'm not as  
22 good at speaking as Kirkland is, but in this instance, the  
23 facts speak for themselves. First of all, the debtor did  
24 not have \$750 million of insurance as they claimed on the  
25 Celsius website. They claim they had it through GK8. It

1 was presented in a way that it made it appear that customer  
2 deposits were insured, as you can see for yourself in my  
3 declaration. The debtors have not addressed the elephant in  
4 the room, so to speak. and it's a very important one, which  
5 is the seemingly false claims that are made approximately  
6 three weeks prior to prior to the petition filing.

7 Secondly, I also believe that a similar, but  
8 different issue is with GK8 itself. GK8 has claimed at  
9 various times that it has \$500 to \$750 million of insurance  
10 which was addressed in the debtor's reply. And now it's one  
11 billion dollars of insurance available on their website to  
12 their clients. It seems that Celsius Network debtor at  
13 least was a client of GK8 because of the I believe it's  
14 Matic and Cardano cryptocurrencies which were recently  
15 transferred from GK8 back to Celsius before the sale. The  
16 debtors have still not admitted their claim of insurance was  
17 either false or misleading. They seem to have been mostly  
18 trying to avoid the subject entirely and focusing on the GK8  
19 insurance policy on the GK8 website.

20 Third, Celsius has disclosed that it has an error  
21 in emissions policy from Lloyd's (indiscernible) Syndicate.  
22 It's only valued at roughly \$750,000 I believe. I'm not  
23 sure the exact value of it. But like the insurance policy  
24 is for 750K. I'm not sure how much it's valued, like if you  
25 can sell it or whatever. It came into effect August 2022,

1 which was after the misrepresentation. So was there any  
2 insurance before? The main questions which are unanswered  
3 that remain and should be answered are one, was there or was  
4 there not errors and omissions insurance in June 2022 and  
5 July 2022 naming any one of the various debtor entities  
6 whether it's GK8 or Celsius and all of the subsidiaries, et  
7 cetera, et cetera, as a beneficiary? And what was the  
8 relationship of Celsius to Aon PLC, which had previously  
9 undisclosed marketing because it was represented that  
10 Celsius had \$700 million insurance, not it was some  
11 hypothetical maybe marketing. And what relation does GK8  
12 have with the two Aon NDAs? Did GK8 and Celsius engage in  
13 some sort of -- and I'm saying this alleged -- alleged  
14 insurance fraud in June and July 2022?

15 THE COURT: Mr. Frishberg, you do you understand  
16 this is a motion for reconsideration despite how you tried  
17 to characterize it in your reply.

18 MR. FRISHBERG: Yeah, and I --

19 THE COURT: And there's a specific legal standard  
20 that applies to motions for reconsideration.

21 MR. FRISHBERG: Yes, Your Honor. I'm getting to  
22 that part. I'll skip, skip to it real quick. I do not, I'm  
23 not an insurance expert, but before the GK8 sale is  
24 consummated and liabilities discharged, we need some answers  
25 and I believe that the, how you call it, new information

1 came out after the GK8 sale was approved that the insurance  
2 policy did not exist, but it was claimed at one point, I  
3 believe up until July 5th, I'm not sure exactly what date it  
4 was removed from the website, that the insurance policy,  
5 \$750 million insurance was through GK8. So I believe they  
6 may have held liability there and I do not believe that any,  
7 how do you call it, it should not be discharged, the  
8 liability. Either an examiner or special insurance examiner  
9 should be directed to look at this. Thank you, Your Honor.  
10 That is all.

11 THE COURT: Okay. Mr. Latona.

12 MR. LATONA: Your Honor, Dan Latona of Kirkland  
13 and Ellis on behalf of the debtors. Your Honor, the debtors  
14 did file an objection at Docket Number 1869 and in support  
15 of that objection, filed the declaration of Ms. Melissa  
16 Workman, Senior Director of Operations for Celsius, debtors,  
17 at Docket Number 1870. Ms. Workman is available to answer  
18 questions to the extent anybody does. I would like to admit  
19 that declaration into the record without any questions.

20 THE COURT: All right. What's the ECF docket  
21 number again?

22 MR. LATONA: 1870.

23 THE COURT: All right. Are there any objections?

24 All right, the declaration is admitted in evidence.

25 (Melissa Workman declaration admitted into

1 evidence)

2 MR. LATONA: Thank you, Your Honor. Your Honor,  
3 contrary to there being a number of unanswered questions,  
4 the debtors have taken painstaking attempts to communicate  
5 with Mr. Frishberg, as you can see from his various filings  
6 on the docket. The debtors have constantly communicated  
7 with him, explained to him the arrangement between GK8, Aon,  
8 and third-party insurers. What that arrangement is, which  
9 predates Celsius acquisition of GK8, is Aon, acting as  
10 broker, would work with institutional customers who held  
11 cryptocurrency on GK8's platform to obtain insurance for  
12 those assets with third-party insurers. GK8, nor Celsius,  
13 were never part of any insurance policy with Aon or USI.  
14 This is a fundamental misunderstanding of the arrangement  
15 that the debtors have repeatedly articulated to Mr.  
16 Frishberg, have provided both insurance policies that are  
17 being sold in the sale. Regarding the E&O policy, the only  
18 insured is GK8 Limited and none of the proceeds of that  
19 policy would be available for account holders. Mr.  
20 Frishberg continues to conflate Celsius and GK8. He is  
21 reconsidering or attempting to reconsider the sale of GK8.  
22 On GK8's website at all times, did the debtor or the GK  
23 debtors indicate that insurance was available to GK8  
24 customers through Aon or through USI. Mr. Frishberg cites  
25 no new evidence, as his various declarations indicate this

1 information was on the GK8 debtor's website well in advance  
2 of the December 6th objection deadline to GK8 sale. Nor has  
3 he provided any clear and convincing evidence of any fraud  
4 involved in the GK8 sale. And as was demonstrated at the  
5 sale hearing with the Kielty declaration and the order that  
6 was entered, this is a value maximizing sale. The sale with  
7 Galaxy is the highest and best offer available.

8 And, Your Honor, the debtors have taken  
9 significant steps toward closing that transaction. After  
10 the order was entered in the United States, the debtors  
11 obtain recognition of the Chapter 11 proceeding in Israel  
12 including enforcement of that sale order and the debtors are  
13 weeks away from consummating this transaction. This motion  
14 is nothing more than a distraction to a value maximizing  
15 transaction that presents no new evidence and continually,  
16 continuously accuses the debtors of concealing assets and  
17 committing bankruptcy fraud without any factual basis.

18 So on that, Your Honor --

19 THE COURT: Mr. Latona, can you provide the Court  
20 with the order of the Israeli court that recognized and  
21 enforced the sale in both, obviously in Hebrew and also an  
22 English translation of it?

23 MR. LATONA: Absolutely, Your Honor, we'll provide  
24 it.

25 THE COURT: When did you obtain, when did the

1 debtor obtain that ruling in Israel?

2 MR. LATONA: I believe it was approximately  
3 January 9th. I may have my dates off by a day or two.

4 THE COURT: All right. And what is the anticipated  
5 or expected closing date that you're shooting for?

6 MR. LATONA: As of right now, we're targeting  
7 February 3rd.

8 THE COURT: All right. All right. Anything else  
9 you want to add, Mr. Latona?

10 MR. LATONA: No. With that, Your Honor, we  
11 request that the motion be overruled and the objection be  
12 sustained.

13 THE COURT: All right. The Court is going to take  
14 it under submission and will act promptly. I understand  
15 when you're trying to close the transaction. I would, as I  
16 said, I would like to see the order of the Israeli Court,  
17 both the Hebrew and in English. Thank you.

18 MR. LATONA: For sure, Your Honor. We'll send  
19 that to chambers as soon as possible.

20 THE COURT: All right, let's move on on the agenda  
21 then.

22 MR. LATONA: Thank you, Your Honor. At this time,  
23 I'm going to cede the lectern to my partner, Mr. Koenig.

24 MR. KOENIG: Your Honor, again for the record,  
25 Chris Koenig, Kirkland and Ellis, for the Celsius debtors.

1 The next few motions are motions of pro se creditors  
2 relating to their Earn accounts. I'll cede the lectern to  
3 them in whatever order Your Honor prefers.

4 THE COURT: All right, Mr. Khanuja.

5 MR. KHANUJA: Hello, Your Honor. I'm just logging  
6 in. Thank you and good afternoon, good morning, Your Honor.  
7 I wanted to, I've already filed a reply to the debtor's  
8 objection. My reply number is Docket Number 1909. And the  
9 debtor's objection being Docket Number 1872. Earlier, I  
10 filed an amended motion, Docket Number 1816 regarding on  
11 account ownership and equal standing as custody. Now I've  
12 provided a lot of details in my response, in my reply, as  
13 well as in my motion. I don't wish to go through those in  
14 detail in the interest of time.

15 Today I wish to make three different points. Your  
16 Honor, we have not had a full evidentiary hearing or  
17 opportunity to present evidence as pro se. For example, the  
18 deposition testimonies or tax documents. With regards to  
19 the ambiguity caution, the Celsius executives declarations  
20 clearly contradict the testimonies they provided in their  
21 deposition. As an example when a key Celsius executive says  
22 he can understand how customers can create the terms of use  
23 differently, similarly, another executive likens the  
24 customer deposits, deposits to loans and customer assets to  
25 a lien, these are all ambiguous terms. Please refer to the



1 transcript from the date number date, November 22 of Mr.  
2 Orin \*\* blanching, Page Number 388, Line 14 and Page 391,  
3 Line 7, also, Page Number 83, Line 3. Also, we can refer to  
4 the transcript from date November 21st of Mr. Chris Ferraro,  
5 Page Number 286, Line 16 and Page 289, Line 14.

6 The deposition testimony of the executives  
7 actually contradicts their deposition in support of the  
8 motion. They say people can disagree to the terms of use  
9 interpretation and hundreds of people have already  
10 disagreed.

11 With regards to the second point I want to make is  
12 around ownership. I have paid taxes as evidence of  
13 ownership. This is an evidence of ownership that the  
14 debtors, themselves, provided to me. In reliance of those  
15 tax forms, 1099 forms, I pay taxes so the debtor's must ease  
16 shop from asserting that I'm not the owner of the assets.

17 Now with regards to unconscionability, issues  
18 related to contract formation including unconscionability,  
19 will dictate the assets I get back. So they must be heard  
20 now as supposed to be heard through the claims process.  
21 Your Honor, in conclusion, what I really asked for is an  
22 opportunity to present the evidence in a meaningful way.

23 THE COURT: Thank you, Mr. Khanuja. Mr. Koenig.

24 MR. KOENIG: Thank you, Your Honor. Chris Koenig.

25 So first I want to -- before turning to Mr. Khanuja's

1 specific arguments, I just wanted to take a step back and  
2 start with the Earn motion, the Earn opinion, why we  
3 structured it in the way that we did, why we did the process  
4 that we did. The Earn motion sought a broad ruling about  
5 the enforceability of the terms of use generally is a  
6 contract between Celsius on the one hand, and its account  
7 holders on the other hand. And we saw the ruling that the  
8 terms of use unambiguously provide that the Earn assets  
9 belonged to Celsius. The Earn opinion provided that  
10 threshold ruling finding that the terms of use were an  
11 enforceable contract and that the terms of use unambiguously  
12 provided that Celsius owns the Earn coins. That is the  
13 first step of the process. That makes sense because the  
14 terms of use generally apply across the board to customers  
15 and govern the relationship between Celsius and its  
16 customers.

17 Both the motion and the Earn opinion each reserved  
18 for the claims process the resolution of individualized  
19 contract offences. That's a later step of the process.  
20 They are individualized arguments, facts and circumstances  
21 that account holders can raise as part of the process. But  
22 importantly, and as the Earn opinion recognized, even many  
23 of these contract offenses would only result in a general  
24 unsecured claim. It wouldn't result in the account holder's  
25 having full ownership of the cryptocurrency. That is, these

1 arguments would not change the ultimate outcome of the Earn  
2 opinion, which is that account holders have general  
3 unsecured claims against Celsius for their cryptocurrency  
4 balances.

5 That brings us to the main issue in these Chapter  
6 11 cases. There simply is not enough cryptocurrency to  
7 fully satisfy Celsius obligations to its account holders in  
8 full. There's a significant hole in the balance sheet and  
9 as Mr. Kwasteniet explained at the beginning of the hearing,  
10 we're working to maximize value and promptly distribute that  
11 value to account holders. And the fact that the Earn  
12 opinion rules that Celsius owns the crypto does not mean  
13 that account holders will not receive that value as part of  
14 a Chapter 11 plan. Pursuant to the bankruptcy code, Celsius  
15 is obligated to return that value to its stakeholders who  
16 here are the account holders. These, the Earn opinion  
17 expressly resolves many of the issues that that Mr. Khanuja  
18 has raised. And turning in a little bit more detail to what  
19 he argued, he argued tax documents. That issue was raised  
20 at the Earn hearing. Your Honor found that those tax  
21 documents were not relevant because you know, black letter  
22 contract law provides that where the contract is plain and  
23 unambiguous on its face, extrinsic evidence is not needed.  
24 So those tax documents, that tax argument is overruled by  
25 the Earn ruling. The Court also found that the contract

1       itself was unambiguous. Mr. Khanuja was pointing to some  
2       testimony and depositions to what certain of the debtor's  
3       witnesses, you know, may have said under oath, under  
4       questioning during a seven-hour long deposition. What the  
5       witnesses think or doesn't don't think is not relevant to  
6       the outcome here, which is that the Court, you know, found  
7       that the language and the Earn terms of use were  
8       unambiguous.

9               As for unconscionability, you know that is a  
10       contract defense that's left, you know that's left for the  
11       claims process. But just to address it, you know, even if  
12       Mr. Khanuja is right and the contract is unconscionable and  
13       he somehow believes that means that he owns the  
14       cryptocurrency assets in his account, it brings us back to  
15       the elephant in the room that I already talked about, which  
16       is, there simply isn't enough crypto to go around. So it  
17       would simply cause a race to the courthouse as claimants  
18       rushed to try to bring their contract defenses  
19       unconscionability, constructive trust, whatever else, with  
20       claimants who successfully establish this defense,  
21       potentially harming claimants who did not. And that type of  
22       race is exactly what bankruptcy is designed to avoid. It's  
23       designed to have the equitable treatment of all similarly  
24       situated stakeholders like, you know, that Mr. Khanuja is  
25       similarly situated to all other Earn account holders.

1           So we are working to return value as quickly as  
2     possible. We're litigating -- we think that litigating each  
3     and every account holders claims and contract defense  
4     theories now, as Mr. Khanuja suggests, would be severely  
5     inequitable, wasteful of estate resources, and ultimately is  
6     not likely to change the outcome here because of the  
7     practical problem of the hole in Celsius balance sheet.

8           So I'll rest there.

9           THE COURT: All right, I'm going to, I'm going to  
10    take it under submission and in due course, enter an opinion  
11    or order. We're going to move on next to the claim of  
12    Rebecca Gallagher, a motion seeking a ruling that the coins  
13    deposited to the Celsius Earn accounts of her property. Ms.  
14    Gallagher.

15          MS. GALLAGHER: Yes, Your Honor. Thank you for  
16    hearing from me today. It feels like it's almost redundant  
17    given everything that's come out today, that this motion  
18    should have been heard on December the fifth when it was  
19    first attempted to be heard. I think we have some extrinsic  
20    evidence that's appeared since your ruling when the Attorney  
21    General for New York, Leticia James, filed her petition.  
22    Because now we know that Mashinsky has been charged with  
23    various crimes. He's been charged with repeated  
24    misrepresentation and omission, aggravated fraud, repeated  
25    and persistent illegality and failure to register. So these

1 are pretty serious charges.

2 THE COURT: Let me just, the only thing I would  
3 say is it's not a criminal complaint, but you're largely  
4 correct about the some of the allegations that are made  
5 about Mr. Mashinsky, but it's not a criminal indictment.  
6 It's a civil lawsuit that the attorney general has filed.  
7 But go ahead. I've read, I've read the complaint, so I  
8 understand what's in there.

9 MS. GALLAGHER: Yes, I mean the reason I brought  
10 that up is because I was accused of not arguing to the  
11 heightened pleading requirements that state that I should  
12 have argued with particularity about the circumstances  
13 construing fraud. So I made lots of arguments about the  
14 fraud and I believe I've given a lot of evidence. In my  
15 response to the objection, I've added a lot of exhibits with  
16 timestamps so that everything is fully documented and the  
17 fact remains --

18 THE COURT: Ms. Gallagher, I think that you and  
19 others other Earn account holders, may or may not, I'm not,  
20 not ruling on it, have fraud claims against Mr. Mashinsky or  
21 against Celsius, but that doesn't, they don't address the  
22 issue of whether the contract provided ownership of those  
23 assets to Celsius. You may have, and I think Mr. Kwasteniet  
24 really addressed this at the start. I mean, whether you and  
25 other Earn account holders have fraud claims, the basic

1 point is you deposited assets, you want it back and the  
2 debtor, a plan will hopefully return the maximum amount of  
3 value that can be. It's not whether -- the issue is not  
4 whether you also have a fraud claim that you can assert.  
5 The issue is the ownership of the assets that were deposited  
6 under the terms of use. But go ahead with your argument.

7 MS. GALLAGHER: Well I would say that if the  
8 terms of use are unambiguous, how can there be a legal  
9 contract when they were engaged in illegal operations? They  
10 did not have the license to offer legal securities, which is  
11 the Earn program that I was in. They did not have the  
12 license to offer legal storage, which is custody. That was  
13 a fiction and a manufactured distinction. They did not have  
14 the legal licenses to offer rehypothecation, which is  
15 banking, or legal trading, which is money transmission, or  
16 legal collateralized loans, which is lending. So how can  
17 the contract be construed as being valid that we were all  
18 under when the whole operation was illegal?

19 THE COURT: Anything else you want to add?

20 MS. GALLAGHER: I would also like to say that we  
21 heard in December from one of the regulators that they had  
22 not even been approached at that point by Celsius and the  
23 reorganization plan and that that regulator said it usually  
24 takes two years for these licenses to be put in place. So  
25 does that mean that if we go along with the go-forward plan,

1 we'll be in this process for two years and drain the entire  
2 estate of all of our assets before we can get these licenses  
3 and move forward? This is a very serious concern.

4 And then the other issue I wanted to address was  
5 the unconscionability, because the unconscionability  
6 standard states that something is so grossly unreasonable or  
7 unconscionable in the light of the mores and business  
8 practices of the time and place as to be unenforceable. And  
9 I would say that substantial substantive, unconscionability  
10 has occurred in this situation. That's when the contract  
11 terms are so one sided as to shock the conscience.

12 So this contract that we're saying is unambiguous  
13 is the epitome of substantive, unconscionability. The idea  
14 that somebody such as myself, an unaccredited investor,  
15 would give hundreds and thousands of dollars to Celsius in  
16 exchange for a fee and subject my life savings to complete  
17 loss at any time is patently unconscionable. Also to  
18 defraud or put property out of the reach of a creditor in  
19 anticipation of or during bankruptcy is a fraudulent  
20 conveyance.

21 And I believe that the debtors set this up  
22 deliberately. They were being hounded out of the UK by  
23 regulators. They changed the terms of service before they  
24 came to the states to make it very preferential for them to  
25 be under Chapter 11 protection. And they also gave



1 themselves free rein to invest in things which we were never  
2 told our assets were being used for, GK8 and mining  
3 operations.

4 And so I just wonder how much faith we can have in  
5 any reorganization plan? And I certainly don't want to be  
6 building a runway. And I don't think any other creditor  
7 wants their funds to be used to build a greater runway. We  
8 want to get off this plane right now and maximize our  
9 returns.

10 THE COURT: All right, thank you for your  
11 argument, Ms. Gallagher. Mr. Koenig.

12 MR. KOENIG: Thank you, Your Honor. Chris Koenig.  
13 I'll incorporate my argument against Mr. Khanuja. I don't  
14 want to repeat myself, but I'll address just specifically  
15 what Ms. Gallagher said. She refers to a lot of extrinsic  
16 evidence. Extrinsic evidence, of course, is only relevant  
17 to the extent the contract is ambiguous. In the Earn  
18 opinion, we sought a ruling and the Court gave that ruling  
19 that the contract, there was a valid contract. There was  
20 offer, acceptance, consideration and that the terms of the  
21 Earn -- that the terms of the terms of use were  
22 unambiguously provided that Celsius owns the Earn coins. To  
23 her point of the regulators, I think Mr. Kwasteniet said at  
24 the beginning of the hearing that we have been speaking to  
25 regulators. We certainly do not believe that it will take

1 two years for us to get out of this bankruptcy. We expect  
2 that it will be, you know, in a matter of months, certainly  
3 not a matter of years.

4 She focused on unconscionability. The terms of  
5 use provided that customers would transfer ownership of  
6 their cryptocurrency to Celsius and in exchange for that  
7 transfer, they would be paid a yield. That was the risk  
8 that they were taking. That was the bargain that they were  
9 entering into and they received that yield. Certainly, the  
10 circumstances that have befallen Celsius and the  
11 cryptocurrency industry are very significant and the debtors  
12 and their advisors, you know, are very cognizant of the  
13 hardship that it has placed on Ms. Gallagher and other  
14 Celsius customers. The problem is, as I said earlier, we  
15 simply can't give all, we can't give each customer all of  
16 the crypto that was reflected in their account as a  
17 liability. It is not there. So we are doing the best that  
18 we can to equitably distribute value to customers under a  
19 Chapter 11 plan or otherwise as fast as we possibly can.  
20 But what Ms. Gallagher wants is a ruling that the assets in  
21 her account should be her property. There simply are not  
22 enough of those assets in Celsius, on Celsius balance sheet  
23 to do that. If there were, we would not be in bankruptcy.  
24 We would not be having this proceeding this morning.

25 So that, that's all, that's all I'd say. I'll

1 rest on my papers at this point, Judge.

2 THE COURT: All right, I'm going to take it under  
3 submission for both Mr. Khanuja and Mr. Cruz. I'm not  
4 recognizing anybody who is to speak who is not involved in  
5 the pending motion. Ms. Gallagher had her chance to address  
6 the issue. Mr. Koenig has responded and the matter of being  
7 taken under submission. So Mr. Khanuja, I will not  
8 recognize you. Alright, the next is Mr. Benzaken. I  
9 probably mispronouncing it, B E N Z A K E N.

10 MR. BENZAKEN: Your Honor, that was excellent.  
11 And thank you very much. I've dived into four source  
12 documents which is the debtor's omnibus objection to certain  
13 motions regarding today's claim, your own ruling on  
14 earnings, as well as the Oren Blonstein declaration and the  
15 supplementary documentary declaration, which was very  
16 revealing. I've also heard that we don't want to get down  
17 into issues that would otherwise be best handled during the  
18 claims process. And I also don't want to extend the time  
19 whereby we continue to burn through cash when people, quite  
20 frankly, are suffering and they could use a hopefully a good  
21 return and equitable adjust return. So, I wanted to say in  
22 relative to my brother's claim, I've dived into a lot of  
23 detail relative to login activity relative to the Blonstein  
24 declaration, the supplementary declaration, your earning  
25 ruling, as well as some of the objections by Kirkland, some

1 of which I agree with, quite frankly. And there's a level  
2 of detail and in getting into that detail, I don't want to  
3 open up a can of worms and waste anyone's time.

4 And so instead I would ask Your Honor's permission  
5 maybe to have this case considered a fringe case. It is the  
6 0.14 percent as mentioned in Your Honor's ruling, unearned,  
7 so that these details can be looked at and it not have  
8 collateral damages that would potentially extend the  
9 duration of which, you know, we'll be in these proceedings.

10 THE COURT: All right, Mr. Koenig.

11 MR. KOENIG: Chris Koenig, I apologize. I don't  
12 quite understand exactly what Mr. Benzaken is requesting. I  
13 didn't, I didn't exactly follow what he was suggesting we  
14 do.

15 THE COURT: Mr. Benzaken, your motion was seeking  
16 a ruling that the Earn assets in the account are not  
17 property of the debtor's estate. So that's the motion that  
18 I have before me.

19 MR. BENZAKEN: Yes, sir. Yes, sir. Okay. So if  
20 you'd like I can get into the detail. I was requesting not  
21 to. Essentially, it's akin to the post-petition funds that  
22 were received with Ms. Connell on 1817 following the  
23 petition. I would state to claim that my brother's account  
24 was in the same situation. I can get into that detail and  
25 I'm hoping maybe we can broaden that for accounts that

1 otherwise would have been shut down per the Blonstein  
2 supplementary declaration per the notifications directly  
3 from Celsius, but again this is the level of detail that  
4 involves login history, communications, and the TOU. So I  
5 looked exactly at the contract language because that was  
6 what we were encouraged to do for today. I didn't want to  
7 move outside of that. And the contract language is in a  
8 line specifically for the one that he would be bound,  
9 arguably, before the date of the first transfer of funds,  
10 which is, I can get into that if you wish.

11 THE COURT: I understand your point.

12 MR. KOENIG: I understand it a little better now.  
13 Thank you so much. I didn't understand what he meant by a  
14 fringe case. I'll address the motion. I believe what Mr.  
15 Benzaken is referring to, it's his brother's claims. I'll  
16 just, when I'm referring to Mr. Benzaken, I'm referring to  
17 the claimant, not Michael Benzaken.

18 THE COURT: I understand, one of them was  
19 withdrawn. I certainly gave Mr. Benzaken permission to  
20 argue on behalf of his brother, who is unable to do so  
21 today. So go ahead.

22 MR. KOENIG: Understood. What the claimant argues  
23 is that he argues that a version of the terms of use applies  
24 to him specifically or his brother's account specifically.  
25 And that that version does not transfer ownership to the

1 debtors. But if you look at the date that the claimant  
2 opened the account, it appears that that's terms of use  
3 version seven that would apply. In the Earn opinion, I  
4 believe that Your Honor indicated that version five was  
5 really the key version where the language became crystal  
6 clear. So version seven is after version five. So we think  
7 that Your Honor's Earn ruling would apply to this, to this  
8 account. And you know, even if it didn't, there are other  
9 methods, you know, where Your Honor's ruling indicated that  
10 the debtors could amend the terms of use without further  
11 consent of the user and that the continued use of the  
12 service was proper consideration for the modification of the  
13 contract. But even on its face, it appears that version  
14 seven applies. And so that we believe that the Earn ruling  
15 would apply in equal force to this claim.

16 THE COURT: I understand, Mr. Benzaken, I  
17 understand the arguments that are being made by both sides.  
18 I'm going to take this one under submission as well.

19 MR. BENZAKEN: Thank you.

20 THE COURT: And I think that concludes the  
21 specific agenda, the motions that were on for today. Mr.  
22 Koenig or Mr. Kwasteniet, is there anything you want to add?

23 MR. KOENIG: No, thank you, Your Honor. We'll  
24 speak to you soon.

25 THE COURT: All right, we are adjourned. Thank

1 you very much, everyone, for participating today.

2 (Whereupon these proceedings were concluded at

3 12:16 PM)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing  
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

Veritext Legal Solutions

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Mineola, NY 11501

Date: January 25, 2023

[& - 2020]

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